TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~443.~~ 199.

BRANCH, SONS & COMPANY AND THE SOUTH CAROLINA RAILROAD COMPANY, APPELLANTS,

vs.

THE CITY COUNCIL OF CHARLESTON ET AL.

No. ~~444.~~

THE CITY COUNCIL OF CHARLESTON ET AL., APPELLANTS,

vs.

BRANCH, SONS & COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED JULY 7, 1874.

B

T

A

S
I
I
I
I
I
I
A
A

SUPREME COURT OF THE UNITED STATES.

No. 443.

BRANCH, SONS & COMPANY AND THE SOUTH CAROLINA RAILROAD COMPANY, APPELLANTS,

vs.

THE CITY COUNCIL OF CHARLESTON ET AL.

No. 444.

THE CITY COUNCIL OF CHARLESTON ET AL., APPELLANTS,

vs.

BRANCH, SONS & COMPANY.

APPEALS FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

INDEX.

	Original.	Print.
Statement of cause	1	1
Decree	2	1
Report of special master	4	2
Exceptions to report	24	13
Exceptions to report	29	16
Report of master overruling exceptions	34	18
Decree	36	19
Appeal	38	20
Agreement of counsel as to bond	40	20
Clerk's certificate	41	21

1 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit:

In the circuit court.

THOMAS BRANCH, A CITIZEN OF THE STATE OF Virginia, John P. Branch, a citizen of the State of Virginia, Frederick R. Scott, a citizen of the State of Virginia, Thomas P. Branch, a citizen of the State of Georgia, copartners, under the name of Branch, Sons & Co.

vs.

THE CITY COUNCIL OF CHARLESTON, STEPHEN Thomas, a citizen of the State of South Carolina, George Addison, a citizen of the State of South Carolina, The South Carolina Railroad Company.

} In equity.

This case having been remanded to the circuit court under the decree and mandate of the Supreme Court of the United States, the following proceedings were had, at the April term, 1873, of said court:

United States circuit court, South Carolina district, fourth circuit.

2 THOMAS BRANCH, SONS & CO.
vs.
THE CITY COUNCIL OF CHARLESTON, et al.

The decree of the Supreme Court, to which this case was carried by appeal from the decree in this court, having reversed the decree so made, it is now ordered that the complainants have leave to shew, before Samuel Lord, esq., who for that purpose is made special master of this court, if any, and, if so, what property of the South Carolina Railroad Company was acquired by it for the accommodation of the business belonging to its original roads, or for the joint accommodation of the entire systems of roads under its control, and of such property how much and in fair proportion should be exempt from taxation.

That he do further report what property of the South Carolina Railroad Company has been acquired by it directly under its own charter, and for purposes connected with the original road, that such property may be decreed exempt from taxation; and further that he do report what property, if any, besides that not directed to be apportioned as herein stated, and that acquired by the South Carolina Railroad Company under its own charter and belonging to the South Carolina Railroad Company, is subject to taxation.

3 It is further ordered that the said master do proceed to enquire into and report on the matters referred to him within thirty days from the date of this order; and that all proceedings for the payment of taxes, claimed to be due by the South Carolina Railroad Company, be stayed until the coming in of such report, and the order of the court thereon, with leave also to report special matters submitted by either party; and that he return with his report to the court all the testimony taken by him and offered by either party, and all

affidavits and papers which shall be produced in evidence before him, properly certified.

HUGH L. BOND, *Ct. Judge.*
GEO. S. BRYAN,
U. S. Judge, Dist. of S. C.

19 APRIL, 1873.

Which order was returned endorsed as follows:

I have executed the within process by serving copy of same personally on G. E. Addison, city sheriff of Charleston.

May 1, 1873.

A. F. FARRAR, *Spel. Deputy.*

And on the 20th day of March, 1874, Samuel Lord, esquire, special master, filed his report and exhibits A & B, which report is in the following words and of the tenor following:

4 United States circuit court, South Carolina district, fourth circuit.

THOMAS BRANCH, SONS & CO.
vs.
CITY COUNCIL OF CHARLESTON ET AL.

Report of Samuel Lord, jr., special master. Filed with Exhibits A & B, March 20th, 1874.

Filed Apl., 1874.

J. E. MAGOON,
C. C. C. U. S. Dist.

5 To the honorable the judges of the said court:

By an order of this court, made on the 19th of April, 1873, I was directed to report—

1st. What property of the South Carolina Railroad Company was acquired by it for the accommodation of the business of its original roads, or for the joint accommodation of the entire systems of roads under its control; and of such property how much and in fair proportion should be exempt from taxation.

2nd. What property of the South Carolina Railroad Company has been acquired by it directly under its own charter and for purposes connected with its original road, that such property may be decreed exempt from taxation.

3rd. What property, if any, besides that not directed to be apportioned, and that acquired by the South Carolina Railroad Company under its own charter and belonging to the South Carolina Railroad Company, is subject to taxation.

I respectfully report that, under this order, I have been attended
6 by the solicitors of the parties, plaintiff and defendant, at numerous references, and have taken the testimony herewith filed as a part of this report.

The real estate within the present limits of the city of Charleston, now owned by the South Carolina Railroad Company, consists of two separate and well-defined parcels of land, which are delineated with sufficient accuracy, for the purposes of this case, on the plat herewith

filed as Exhibit A. The first is a long, narrow strip of land, lying between Meeting and King streets, and extending from Hudson street to the northern boundary of the city. Upon this the depots, shops, yards, and railroad tracks of the company are located. I file herewith, as Exhibit B, a statement showing the location of each piece of land, from whom purchased, the cost price, the date of purchase, the dimensions, how occupied, and its value according to a recent appraisement made by commissioners appointed partly by the city and partly by the railroad company. It will be seen by reference to this statement that this property embraces—

1st. Various lots, purchased by the South Carolina Canal and Railroad Company prior to December, 1837, and vested in the South Carolina Railroad Company by the act of 1843. This property cost $25,205, and this was probably its value when acquired by the South Carolina Railroad Company. Its present assessed value is $99,600. This increased value of $74,395 is entirely owing to the workshops, depots, and other improvements which have been put upon the land by the South Carolina Railroad Company since 1843, the value of all other lands in the city having in the meantime greatly depreciated. According to the testimony of Mr. Magrath, the president of the road, all the depots and other buildings existing prior to that time have been entirely destroyed or removed, and replaced by others of a far more costly and substantial character.

2d. Various lots, purchased by the Louisville, Cincinnati and Charleston Railroad Company between December, 1837, and February, 1843. The lots are now valued in the aggregate at $2,300.

3d. Various lots, purchased by the South Carolina Railroad Company since 1844, and now valued at $177,400.

7 Prior to 1849 all of this land was without the corporate limits of the city of Charleston. By the act passed on the 19th day of December, 1849, the city limits were extended, and they then took in, for the first time, the property of the South Carolina Railroad Company.

The second parcel of land belonging to the company lies in the eastern portion of the city, on Cooper River. It consists of various lots purchased by the South Carolina Railroad Company between the years 1853 and 1870. Its present value is $94,900. The history of this purchase is as follows: The South Carolina Canal and Railroad Company was not authorized to cross the limits of the city. It had only power to come to the boundary-line of the city, and the city council were authorized to permit the extension of its road through the public streets and lands of the city. (A. A. 1832.) In 1840 the legislature authorized the South Carolina Railroad Company to extend their road to some one or more of the wharves in Charleston, (A. A. 1840,) and in 1845 adopted a joint resolution declaring that they regarded it as highly desirable that the company should forthwith lay down a track to connect the depot with the wharves of Charleston in such manner as might afford free access and competition to all.

The evidence shows that the property in the eastern part of the city was purchased to carry out that purpose, and that it is the intention of the company to locate its depots at that point as soon as the means to make the connection can be raised. Though not in actual use, there is no doubt that this property has been acquired by the South Carolina Railroad Company for the joint accommodation of the entire system of roads under its control. This is also true of all the other property (with an inconsiderable exception) now owned by the South Carolina Railroad Company, whether purchased from the South Carolina Canal and Rail-

road Company or other parties. The only property which can, with any propriety, be said to have been purchased by the South Carolina Railroad Company, directly under its own charter, for purposes connected exclusively with its original road, is the property purchased by it under the name of the Louisville, Cincinnati and Charleston Railroad Company, before 1843, and when the union of that company and
8 the South Carolina Canal and Railroad Company had not been thought of. And this property, even if it is properly to be regarded as having been purchased exclusively for the South Carolina Railroad, ceased to be so used after 1843, and from that time to the present has been used for the joint accommodation of the entire system of roads.

It remains to enquire what proportion of the property held by the South Carolina Railroad Company should be exempted from taxation. This question must be discussed by the light derived from the decrees of the supreme court in this case, and in the case of Tomlinson vs. Branch, 15 Wallace, 460.

From these decrees I think the following propositions may be fairly deduced:

1st. That all the property acquired by the South Carolina Railroad Company, under its own charter, and for purposes connected with its original roads, is exempt from taxation. This applies only to the property purchased by the Louisville, Cincinnati and Charleston Railroad Company prior to 1843.

2d. That all parts of the road and property formerly belonging to the South Carolina Canal and Railroad Company, and all appendages and appurtenances thereof, are liable to taxation, though acquired and used by the South Carolina Railroad Company for the joint accommodation of the entire system of roads under its control. That the Supreme Court kept in view the distinction between the property which the South Carolina Railroad Company had acquired from the South Carolina Canal and Railroad Company, and that which it had acquired under its own charter, is clear, not only from the language used in particular portions of the decree in the case of Tomlinson vs. Branch, but also from the general train of reasoning employed by the court. This distinction pervades the entire decree. The property which the South Carolina Railroad acquired under its own charter, and for purposes connected with its original roads, the Supreme Court declares to be exempt from taxation. As to that which it acquired from the South Carolina Canal and Railroad Company, the court declares, in language equally explicit, that the
9 South Carolina Railroad Company must stand in the place of the company to which it has succeeded, and possesses only the rights and privileges which that company enjoyed. That, in the opinion of the court, all the property of the old company was taxable in toto there can be no doubt, for it has expressly held "that as to the road-property and works appertaining to the main line from Charleston to Hamburg, the South Carolina Railroad Company has no claim to exemption from taxation." If such claim could not be sustained as to the part of the main road extending from Charleston to Branchville, which was undoubtedly acquired by the South Carolina Railroad Company for the joint accommodation of the entire system of roads under its control, it is difficult to see how it can be sustained as to any other portion of the property formerly belonging to the Canal and Railroad Company.

I am, therefore, of opinion that all the property set forth in the schedule as having been owned by the South Carolina Canal and Railroad Company, with the appendages and appurtenances thereof, as they existed at the time of the transfer to the South Carolina Railroad Com-

pany, are liable to taxation. I find that the value of this property at that time was $25,205, its cost price, and that the increased value given to it by the depots, workshops, railroad tracks, and other improvements since put upon it by the South Carolina Railroad Company is $74,395. These improvements come under the category of property acquired by the South Carolina Railroad Company under its own charter and must be taxed accordingly.

3d. That of the company's property in Charleston, acquired by the South Carolina Railroad, under its own charter, for the joint accommodation of the entire system of roads under its control, so much as is properly apportionable and applicable to that part of the line which extends from Branchville to Columbia and Camden, is exempt from taxation. This applies to all property purchased by the South Carolina Railroad Company since 1843. Its value, including the improvements put upon the land purchased from the South Carolina Canal and Railroad Company, is $346,695.

What proportion of this property should be exempt from taxa-
10 tion? The length of the road is the only mode which has been suggested by either side of estimating this.

The length of the road from Charleston to Hamburg is 136 miles; from Branchville to Columbia 68 miles, and from Kingville to Camden 38 miles. If, therefore, I am right in supposing that it was the intention of the Supreme Court to exclude the South Carolina Railroad Company from exemption from taxation, in reference to that portion of the road acquired from the South Carolina Canal and Railroad Company, which extends from Charleston to Branchville, and which is now used jointly by the two roads, 106-136 of this property is exempt from taxation.

The personal property owned by the company within the city limits is appraised at $45,750. It was all acquired by the South Carolina Railroad Company, under its own charter, for the joint accommodation of all the roads under its control, and the same rule must be applied to it as has been adopted in reference to the real estate similarly acquired.

Though I have reached the conclusions announced in this report after long and careful consideration, I am by no means satisfied of their correctness. Various views were suggested by counsel as to the true construction of the decree of the Supreme Court. That which I have adopted is certainly not unexceptionable, but it appears to me that the objections which may be urged against it are less numerous and weighty than those to which any other would be liable.

I was at first inclined to agree with the counsel for the road, that all the property acquired by the South Carolina Railroad Company, under its own charter, either for the accommodation of its original roads, or for the joint accommodation of all the roads under its control, was exempt from taxation, while that acquired under the special legislation of 1843, from the South Carolina Canal and Railroad Company, was only taxable pro tanto and in fair proportion. There is much to support this theory in the language employed by the Supreme Court in the decree made in the case now under consideration, but it appears to me to
11 be wholly irreconcilable with the positive and explicit declaration of the same court in the case of Tomlinson vs. Branch, that the South Carolina Railroad Company can claim no exemption as to that part of the road extending from Charleston to Branchville, and I have, therefore, felt constrained to reject it.

Respectfully submitted.

SAMUEL LORD, JR.,
Special Master.

Testimony.

BRANCH, SONS & CO.
vs.
THE CITY COUNCIL OF CHARLESTON.

A. DECARADEUC, witness produced by railroad company, sworn, says, he is the land agent of the South Carolina Railroad Company; has charge of all the deeds relating to the land of the company. The statement now put in evidence (Exhibit B) contains a statement of all the lands now owned by the company in and near the city, the dates when the same were acquired, and the company by which they were acquired. The prices in these papers are those paid for the land, and do not include the improvements put upon them. There is no depot or building now in use which was constructed previous to 1844. The Hudson street depot may have been built before that time. All improvements made have been made since 1844.

Cross-examined by Mr. Stone:

All the lots are now in possession of the road; has been agent of the road for three years; list is made up from the books in possession of witness.

G. W. WILLIAMS, a witness introduced on the part of the railroad company, sworn, says:

Is a director of the South Carolina Railroad Company. The Railroad Accommodation Wharf and the marsh-lands adjoining were purchased by the company for the purpose of establishing a depot on the Cooper River. This was regarded as a work of absolute necessity, inasmuch as the Central Railroad, in Georgia, which was competing for the business with the South Carolina Railroad, had extended their road to the river, thereby saving the expenses of drayage, w'arfage, clerk-hire, &c., &c. Thinks the extension of the road is an advantage, not only to the company, but also to the city and State. It is the intention of the company to remove their depot to that point as soon as the means to accomplish this object can be procured.

Has large opportunities of being acquainted with the business done by the South Carolina Railroad, in connection with the Greenville and Columbia and other roads leading to the mountains; considers that a permanently-increasing business. The receipts for the business on the Greenville road for January, of the present year, were larger than those for any previous year.

(Mr. Corbin objects to the testimony as to the business of any other road than the South Carolina Railroad.)

The increase of the business on the Greenville road carries with it, as a necessary consequence, the increase of the business on the Columbia branch of the South Carolina Railroad.

Cross-examined:

No definite period has been fixed for extending the road to the Cooper River. It will be done as soon as the means can be raised and the financial condition of the road is better for carrying out such improvements than they have ever been since the war. The South Carolina Railroad having a controlling interest in the Greenville road, gives them the command of the business on that road; that business for Charleston cannot be diverted to other roads, though business for Wilmington, Charlotte, and other points might be diverted to Charleston.

In reply:

The volume of business on the South Carolina road to Columbia being increased by the Greenville connection, it is necessary that a larger amount of rolling-stock should be used on that branch than would otherwise be necessary. The competition of the Charlotte,
13 Columbia and Augusta Railroad diminishes the amount of rolling-stock required on the Augusta line by carrying the business to other points.

In rejoinder:

The greatest amount of business is done on the Augusta line, as the through business is done on that branch. The business on the Columbia branch is increasing more rapidly than on the other branch, in consequence of the Greenville connection.

GEORGE A. TRENHOLM sworn, says:

Is a director in the South Carolina Railroad Company.

The policy of connecting the railroad with the waters of the Cooper River having been determined upon by the board of directors and supported by public opinion and the legislature, the acquisition of the Accommodation Wharf and the adjoining property was essential to carrying out that purpose. It is the intention of the road, as soon as the means can be raised, to make the connection.

Concurs entirely in what Mr. Williams has said as to the business growing out of the connection of the South Carolina Railroad with the Greenville road, and also in reference to the business of the Augusta branch; has been a director of the South Carolina Railroad over thirty years.

All the present buildings and appliances of the road for the public traffic and travel are far superior to those owned by the South Carolina Canal and Road Company, and were built by the South Carolina Railroad Company.

Cross-examined:

Witness has never entirely concurred in the policy of removing the depot to Cooper River, but has yielded, in some measure, to the necessity produced by the competition of other roads; his belief is that such facilities for what is denominated through business, are injurious to the trade of Charleston, and should be delayed until, in the discretion of the company, they become absolutely necessary. New York is the great centre that attracts business from all parts of the country, and everything which cheapens transportation from the South to New York
14 draws business away from southern ports. Locating the depot on the Cooper River would remove some of the charges on transportation, and thereby enable the road to obtain a larger proportion of the business destined for New York and other points North. Drayage and wharfage for through freights would be avoided. The road would not, in that case, charge higher freights, but would carry more goods and do a larger business. Shippers would save drayage and wharfage, &c., &c. Does not know when the track from Line street to Hudson street was laid; has no recollection whether it was laid after the union of the South Carolina Canal and Railroad Company and the Louisville, Cincinnati Railroad Company, in 1844.

The gradual enlargement of the railroad property between Line and Hudson streets, and the acquisition of additional property, was caused by the constant increase of the business of the company, and is necessary for that purpose.

The length of the road:

From Charleston to Branchville is	62	miles.
" Branchville to Hamburg	74	"
" " " Columbia	68	"
" Kingville to Camden	38	"

W. J. MAGRATH, a witness on the part of the road, sworn, says:

Will have been the president of the South Carolina Railroad Company twelve years next October, and has been connected with the road, in various capacities, since April, 1846.

In 1846 the shops and works were in Line street, and their business was done and goods and passengers were received in a miserable shed on Mary street, The buildings from Line to Hudson street were constructed since 1844; does not think any of the old structures are now standing. The locomotives and rolling-stock have been acquired by the South Carolina Railroad Company; none of it belonged to the South Carolina Canal and Railroad Company.

Regarded the acquisition of the Accommodotion Railroad Wharf and the adjacent property absolutely indispensible to the interest both of the company and the city; is still of that opinion. It is necessary to the business of the company, because its business is competed for at all common points—Augusta, Columbia, Charlotte, Spartanburg, and Greenville.

These competitive points possess just those facilities. Wilmington, Portsmouth, Norfolk, Savannah, and Brunswick have their roads running to the water's edge. The acquisition of the property on Cooper River he regarded as a necessity for the business of the road. If this road did not possess these facilities, the through business would go to other cities. The through tonnage is a little more than one-half of all the tonnage that comes to Charleston by the various lines of ships. The New York and Charleston Steamship Companies, with that business and its local business, cannot pay a dividend. It follows that if you take from it this through business, it could not be maintained on one-half the business. If they could not be maintained there would be no ships running between New York and Charleston, or other northern ports.

The possession of the site on Cooper River is necessary to that through business which would not be enjoyed by the city of Charleston, if deprived of the support that is necessary from the water communication between Charleston and New York, and other cities north.

It is the purpose of the South Carolina Railroad Company to locate its depots at the earliest possible moment on the Cooper River. The establishment of its buildings there would render unnecessary a very considerable part of its present depots and yards. That property is to be in substitution for the property now used.

The business between Charleston and Columbia has been an increasing business. The resources of the State along the line of the Greenville and Columbia Railroad have been largely increased. The business of the Greenville and Columbia Railroad has been increased during the past two years nearly fifty per cent.

(Objected to by Mr. Corbin.)

The increase of the business on the Greenville and Columbia Railroad has increased the business on the Columbia Branch of the South Carolina Railroad, because the bulk of the business of that road passes over the South Carolina Railroad. This increased business of the Greenville and Columbia Railroad has rendered it necessary for the South Carolina Railroad to assist that road in the means of trans-

portation by nearly one hundred per cent. of the means proper of the Greenville and Columbia Road.

Cross-examined:

Thinks the records of the company would show when the track of the company was laid to Hudson street. Cannot tell whether the property purchased by the canal and railroad company between Line and Hudson streets, in 1834, was purchased for the purpose of laying the tracks through those lands. Has no recollection of any track below Mary street, and his recollection of the track to that point does not go beyond 1846. From Mary street to Line street the cars were drawn by horses formerly. Recollects the track to Mary street in 1846. Does not know how long before that time it was built. The track from Mary street to Hudson street must have been built about 1850, the building to and through which it runs having been occupied about that time. The shortest line of extension to Accommodation Wharf is three-quarters of a mile. No line has yet been determined upon. Various routes are under consideration. The Cooper River property has not yet been used by the company. It cannot be used until the connection has been made, but that may be done in six months.

The increasing area of the company's property between Line street and Hudson street has been necessary to accommodate the increasing business of the company.

LOUIS J. BARBOT, a witness introduced on behalf of the city council, being sworn, says:

Is city engineer; has examined the list of property of the South Carolina Railroad and the location of the property. The map, now introduced, according to the measurement of the property, furnished by the railroad company is on a correct scale. The black marks represent the buildings and the red the yards. The present track of the company to Hudson street, is located on lands which appear in the list as having

17 been purchased by the South Carolina Canal and Railroad Company, for the purpose of locating the tracks.

Cross-examined:

Does not know where the track of the South Carolina Railroad Company terminated in 1843; thinks at John street. In 1843 the city line was at Calhoun street. No. 16 is partly marsh and mud flat; 17 is the Railroad Accommodation Wharf; very little high land on 17. No. 20 is partly high land, but the whole is covered at spring tides by the water. None of the property owned by the company in 1843 was within the then limits of the city.

JOHN N. GREGG, sworn on the part of the city, says:

Is city appraiser. The list now put in evidence (Exhibit) shows the value of each piece of property. The valuation was made by a board, appointed partly by the city and partly by the road. Each piece was valued separately, and the value indicated is regarded as the present value of the property. The valuation of the personal property at the end of the list was made by the members of the board, appointed by the city, and was subsequently assented to by those appointed by the road.

Sworn to before me,

SAMUEL LORD, JR.,
Special Master.

The length of the road:

From Charleston to Branchville is	62	miles.
" Branchville to Hamburg	74	"
" " " Columbia	68	"
" Kingville to Camden	38	"

W. J. MAGRATH, a witness on the part of the road, sworn, says:

Will have been the president of the South Carolina Railroad Company twelve years next October, and has been connected with the road, in various capacities, since April, 1846.

In 1846 the shops and works were in Line street, and their business was done and goods and passengers were received in a miserable shed on Mary street, The buildings from Line to Hudson street were constructed since 1844; does not think any of the old structures are now standing. The locomotives and rolling-stock have been acquired by the South Carolina Railroad Company; none of it belonged to the South Carolina Canal and Railroad Company.

Regarded the acquisition of the Accommodotion Railroad Wharf and the adjacent property absolutely indispensible to the interest both of the company and the city; is still of that opinion. It is necessary to the business of the company, because its business is competed for at all common points—Augusta, Columbia, Charlotte, Spartanburg, and Greenville.

These competitive points possess just those facilities. Wilmington, Portsmouth, Norfolk, Savannah, and Brunswick have their roads running to the water's edge. The acquisition of the property on Cooper River he regarded as a necessity for the business of the road. If this road did not possess these facilities, the through business would go to other cities. The through tonnage is a little more than one-half of all the tonnage that comes to Charleston by the various lines of ships. The New York and Charleston Steamship Companies, with that business and its local business, cannot pay a dividend. It follows that if you take from it this through business, it could not be maintained on one-half the business. If they could not be maintained there would be no ships running between New York and Charleston, or other northern ports.

The possession of the site on Cooper River is necessary to that through business which would not be enjoyed by the city of Charleston, if deprived of the support that is necessary from the water communication between Charleston and New York, and other cities north.

It is the purpose of the South Carolina Railroad Company to locate its depots at the earliest possible moment on the Cooper River. The establishment of its buildings there would render unnecessary a very considerable part of its present depots and yards. That property is to be in substitution for the property now used.

The business between Charleston and Columbia has been an increasing business. The resources of the State along the line of the Greenville and Columbia Railroad have been largely increased. The business of the Greenville and Columbia Railroad has been increased during the past two years nearly fifty per cent.

(Objected to by Mr. Corbin.)

The increase of the business on the Greenville and Columbia Railroad has increased the business on the Columbia Branch of the South Carolina Railroad, because the bulk of the business of that road passes over the South Carolina Railroad. This increased business of the Greenville and Columbia Railroad has rendered it necessary for the South Carolina Railroad to assist that road in the means of trans-

portation by nearly one hundred per cent. of the means proper of the Greenville and Columbia Road.

Cross-examined:

Thinks the records of the company would show when the track of the company was laid to Hudson street. Cannot tell whether the property purchased by the canal and railroad company between Line and Hudson streets, in 1834, was purchased for the purpose of laying the tracks through those lands. Has no recollection of any track below Mary street, and his recollection of the track to that point does not go beyond 1846. From Mary street to Line street the cars were drawn by horses formerly. Recollects the track to Mary street in 1846. Does not know how long before that time it was built. The track from Mary street to Hudson street must have been built about 1850, the building to and through which it runs having been occupied about that time. The shortest line of extension to Accommodation Wharf is three-quarters of a mile. No line has yet been determined upon. Various routes are under consideration. The Cooper River property has not yet been used by the company. It cannot be used until the connection has been made, but that may be done in six months.

The increasing area of the company's property between Line street and Hudson street has been necessary to accommodate the increasing business of the company.

LOUIS J. BARBOT, a witness introduced on behalf of the city council, being sworn, says:

Is city engineer; has examined the list of property of the South Carolina Railroad and the location of the property. The map, now introduced, according to the measurement of the property, furnished by the railroad company is on a correct scale. The black marks represent the buildings and the red the yards. The present track of the company to Hudson street, is located on lands which appear in the list as having

17 been purchased by the South Carolina Canal and Railroad Company, for the purpose of locating the tracks.

Cross-examined:

Does not know where the track of the South Carolina Railroad Company terminated in 1843; thinks at John street. In 1843 the city line was at Calhoun street. No. 16 is partly marsh and mud flat; 17 is the Railroad Accommodation Wharf; very little high land on 17. No. 20 is partly high land, but the whole is covered at spring tides by the water. None of the property owned by the company in 1843 was within the then limits of the city.

JOHN N. GREGG, sworn on the part of the city, says:

Is city appraiser. The list now put in evidence (Exhibit) shows the value of each piece of property. The valuation was made by a board, appointed partly by the city and partly by the road. Each piece was valued separately, and the value indicated is regarded as the present value of the property. The valuation of the personal property at the end of the list was made by the members of the board, appointed by the city, and was subseqnently assented to by those appointed by the road.

Sworn to before me,

SAMUEL LORD, JR.,
Special Master.

18

EXHIBIT B.

Lots and land in Charleston, purchased by South Carolina Canal and Railroad Company to December, 1837.

Location.	From whom purchased.	Cost.	Date.	Size.	How occupied.	Appraisement.
Streets.						
Hudson, north..	Miss M. Robertson.	3,500	Sept., 1834	80x130	Old passenger depot.	12,550
John, south.....	A. Calder.....	3,700	Mch, 1834	81x128	Old passenger depot.	12,550
John, north.....	Ann Ferguson.....	900	Mch, 1834	38x200	Freight depot.....	4,500
Ann, south.....	J. Parker.....	1,000	Mch., 1834	37x200	Freight depot.....	4,000
Ann, north.....	W. C. Doughty.....	1,000	Oct., 1833	37½x189	Yard.....	1,000
Ann, north.....	Marie E. Paul.....	1,000	Feb., 1834	37½x189	Freight depot.....	4,500
Mary, south.....	Nat. Heyward.....	400	Jan., 1834	40x210	Yard.....	1,000
Mary, north.....	J. Robinson	860	June, 1834	105x120	Yard.....	3,000
Mary, north.....	Forrest Charity...	5,720	Sept., 1835	106x309 50x230 155x145 75x120	Yard.....	8,500
Reid, north.....	Mary Jahan.....	1,000	Oct., 1834	80x188	Yard.....	1,400
Spring, south ...	Jas. Ross.....	1,000	Aug., 1834	50x226	Yard.....	1,000
Spring, north...	J. C. You.....	900	Feb., 1835	220x91.6	Blacksmith shop and yard.	8,000
Columbus, south.	Estate Mary You..	1,000	Aug., 1834	110x180	4 wooden buildings, small.	3,200
Columbus, north.	A. Henry.....	1,000	Aug., 1834	40x240	Yard.....	400
Line, south.....	—— Weissinger...	600	June, 1834	32 & 36x244	Yard.....	400
Line, south.....	J. P. Labatut ...	175	Nov., 1836	18x110	Yard.....	200
Line north.....	Commissioners.....	450	July, 1830	290x302	Passengers' depot	32,000
King	E. Carson.....	300	Mch., 1834	48.6x59.6	Yard.....	500
Romney.....	W. Tyrrell.....	100	May, 1830	25x600	Track.....	100
Romney.....	T. Tupper.....	300	Sept., 1833	40x224	Track.....	300
Romney.....	Wm. Aiken, (exchange.)	300	Oct., 1837	100x400	Track and farm..	500
		$25,205				
Total property bought by South Carolina Canal and Railroad Company previous to December, 1837						99,600

Purchased by L., C. and C. R. R., from December, 1837, *to* ————, 1844.

Mary, south.....	Sam. Maverick....	Exch'ge.	Mch., 1838	.....	Freight-depot and yard.....	800
Wolfe, north....	John P. Martin....	747 50	June, 1838	49x122	Tracks.....	1,000
Spring	Estate Mary Belzer	450 00	Feb., 1843	59x62	Tracks.....	500
Columbus	Sarah Gelzer.....	100 00	April, 1839	A well.	.....	.....
Total property bought by L., C. and C. R. R. from December, 1837, to ....., 1844.....						2,300

19

EXHIBIT B.

Lots and land in Charleston purchased by South Carolina Railroad Company after 1844.

Location.	From whom purchased.	Cost.	Date.	Size.	How occupied.	Appraisement.
Streets.						
John, south	Ann M. Fogartie ..	3,500	Aug., 1849	40x100	Old pass. depot, (not used.)	800
John, south	M. Folker.....	2,500	Aug., 1849	40x103	Old pass. depot and yard.	800
John, south	Trust. A. Seibels ..	2,000	July, 1850	49.9x140.4	Old pass. depot and yard.	800
John, north	Peter Desveneir ..	4,000	Jan., 1849	63x200	Freight depot and yard.	2,000
John, north	Jas. Ferguson	13,000	Jan., 1849	87x218	Cotton-yard	1,200
John, north	— Prioleau	2,500	Jan., 1849	52x200	Freight depot ...	2,000
John, north	McClure and Elder	14,500	Jan., 1853	152x200	Freight depot ...	7,500
John, north	Master in equity*..	.....	.....	.....	.....	.....
Ann, south	John Parker	7,000	Nov., 1848	135x200	Freight depot ...	5,500
Ann, south	F. Parker	2,500	Dec., 1848	30x202	Yard.....	800
Ann, south.....	Wm. Aiken	7,000	Feb., 1849	144x200	Freight depot ..	7,500
Ann, south	Wm. Aiken, (conf. money.)	30,000	July, 1863	130x201	Offices	15,000

* Part of Jas. Ferguson's lot, sold and rebought.

EXHIBIT B—Continued.

Location.	From whom purchased.	Cost.	Date.	Size.	How occupied.	Appraisement.
Streets.						
Ann, south	Rob. Houston	1,025	Nov., 1863	20.6x38	Yard	500
Ann, north	J. W. Schmidt	2,500	Sept., 1848	37.6x189	Yard	900
Ann, north	Edw. Sebring	7,500	Nov., 1848	75x190	Yard	1,200
Ann, north	Sam. Maverick	5,000	Dec., 1848	75x189	Yard	1,200
Ann, north	Heirs of Joe Parsons.	5,000	Oct., 1849	75x190	Freight depot	12,500
Mary, south	Jas. W. Gray	1,550	Oct., 1847	42x230	Freight depot	8,500
Mary, south	Thos. C. Marshal	3,000	Oct., 1848	42x230	Yard	1,000
Mary, south	Sam. Maverick	7,000	Dec., 1848	90x221	Freight depot	8,500
Mary, south	Nat. Heyward	5,000	Feb., 1849	120x215	Yard	2,500
Mary, south	Thos. L. Bulow	7,000	Oct., 1855	99x180	Yard	1,200
Reid, south	Est. Cobia	12,150	July, 1860	135x313	Yard	3,000
Reid, north	Jane K. Wharton	175	Oct., 1850	2x90	Yard	200
Spring, south	W. P. Ingraham	1,300	Sept., 1847	100x212	Yard	2,000
Spring, south	E. Woodworth	3,000	Dec., 1858	50x130	Yard	1,000
Spring, south	Est. F. J. Cobia	2,025	May, 1861	51x87	Yard, 1 wooden building.	1,500
Spring, north	Master in equity	2,400	Sept., 1847	110x93	(Included in J. C. You, 1835.)	.....
Spring, south	J. Pattani	4,000	Feb., 1867	86x147	Yard	1,000
Columbus, south.	R. Yeadon	5,050	May, 1847	274x256	Machine-shop	38,800
Columbus, south.	Master in equity	2,100	June, 1847	106x183	Round-house	12,000
Columbus, north.	Marie Follen	1,800	Jan., 1848	133x160	Yard	3,000
Line, north	— Browning	480	Apr., 1853	30x145	Yard	500
Line, north	J. R. and S. Stall	480	Apr., 1853	30x145	Yard	500
Line, north	F. J. C. Patterson	950	June, 1856	30x145	Yard	500
						145,900
20 Streets	Amount brought forward.	.....	.....	.....	.....	145,900
King	P. McBride	2,000	Oct., 1863	38x39.6	Yard	500
Meeting	Mrs. C. Wilson	2,750	June, 1847	92.6x267	Yard	2,000
Meeting	Nat. Heyward	5,000	June, 1849	90x179	Yard	1,200
Meeting	J. McKeegan	2,000	Feb., 1856	30x100	Yard	500
Meeting	Alb. Elfe	9,000	April, 1856	135x350	2 wooden buildings.	3,500
Shepherd, south.	T. Limehouse	380	April, 1853	30x145	Yard	500
Shepherd, south.	T. Limehouse	380	April, 1853	30x145	Yard	500
Shepherd, south.	J. R. and S. Stall	480	April, 1853	30x145	Yard	500
Shepherd, south.	Z. B. Oakes	315	April, 1853	30x145	Yard and passenger depot.	2,500
Shepherd, north.	Dan. Blake	3,260	Sept., 1856	70x812	Right of way	1,500
Shepherd, north.	Blake and Heyward.	24,560	Aug., 1859	280x800	Car-shed and yard.	12,000
Romney	Edw. T. Malone	1,000	May, 1857	180x287	Track	1,000
Romney	John M. Pearson	9,015	July, 1859	7½ acres	Track and farm	5,000
Russel	A. O. Norris	.....	May, 1855	44x304	Track and farm	300
Property in city limits from Hudson street, between King and Meeting						177,400
			COOPER RIVER.			
Cooper River	Jas. Gadsden	7,500	July, 1853	7 acres	Marsh	2,500
Cooper River	A. V. Toomer	10,000	.....	43 acres	Marsh	4,000
Cooper River	John H. Thee	7,000	Mch, 1856	645x820	Marsh	2,500
Cooper River	Carew and Hacker	8,000	Mch, 1856	300x990	Marsh	3,000
Washington st.	R. E. Dereef	17,000	April, 1870	128x—	Not used	15,000
Washington st.	R. R. Accommodation Wharf.	75,000	.....	1135xirregir.	Not used	50,000
Washington st.	Della Torre & Co	12,000	July, 1870	Irregular	Not used, old mill.	10,000
Wharf street	Estate John Ferguson.	1,100	April, 1870	100x128	Not used	900
Calhoun st.	J. T. Welsman	10,000	June, 1870	1113x120	Not used	7,000
Total Cooper River lands						$94,900
Total between King and Meeting, as above						177,400
Total in city limits bought by South Carolina Railroad after 1844						272,300
Total in city limits bought by L. C. and C. Railroad, 1837 to 1844						2,300
Total in city limits bought by South Carolina Canal and Railroad before December, 1837						99,600
Total appraisement real estate South Carolina Railroad Company, 1874						$374,200
6 miles by 791 feet main track and side tracks in city limits					25,000	
Stationary engines and other machinery					20,750	
						45,750
Total appraisement real estate and personal property						$419,950

21

EXHIBIT C.

Schedule of property arranged according to location.

Location.	From whom purchased.	Cost.	Date.	Size.	How occupied.	Present value of each piece.
Hudson street, north	Miss M. Robertson	$3,500	Sept., 1834	80x130	Old pas. depot	$12,550
John street, south	A. Calder	3,700	Mar., 1834	81x138	Old pas. depot	12,550
John street south	Ann M. Fogartle	3,500	Aug., 1849	40x100	Yard	800
John street, south	Marg. Folker	2,500	Aug., 1849	40x103	Yard	800
John street, south	Trust. A. Seibels	2,000	July, 1850	49.9x140.4	Yard	800
John street, north	Ann Ferguson	900	Mar., 1834	38x200	Freight depot	4,500
John street, north	Peter Devenier	4,000	Jan., 1849	63x200	Freight depot	2,000
John street, north	McClure and Elder	14,500	Jan., 1853	152x200	Freight depot	7,500
John street, north	Jas Ferguson	13,000	Jan., 1849	87x218	Yard	1,200
John street, north	— Prioleau	2,500	Jan., 1849	52x200	Freight depot	2,000
Ann street, south	J. Parker	1,000	Mar., 1834	38x200	Freight depot	4,000
Ann street, south	J. Parker	7,000	Nov., 1848	135x200	Freight depot	5,500
Ann street, south	Wm. Aiken	7,000	Feb., 1849	144x200	Freight depot	7,500
Ann street, south	F. Parker	2,500	Dec., 1848	30x202	Yard	800
Ann street, south	Robt. Houston	1,025	Nov., 1863	20.6x38	Yard	500
King street	P. McBride	2,000	Oct., 1863	38x39.6	Yard	500
King, cor. Ann street.	Wm. Aiken	30,000	July, 1863	130x201	Office	15,000
Ann street, north	J. W. Schmidt	2,500	Sept., 1848	37.6x189	Yard	900
Ann street, north	Heirs Joe Parson	5,000	Oct., 1849	37x190	Freight depot	12,500
Ann street, north	Mone. E. Paul	1,000	Feb., 1834	36.6x189	Freight depot	4,500
Ann street, north	W. C. Doughty	1,000	Oct., 1833	37½x189	Yard	1,000
Ann street, north	Edw. Sebring	7,500	Nov., 1848	75x190	Yard	1,200
Ann street, north	Sam. Maverick	5,000	Dec., 1848	75x189	Yard	1,200
Mary street, south	T. C. Marshall	3,000	Oct., 1846	42x230	Yard	1,000
Mary street, south	J. W. Gray	1,550	Oct., 1847	42x224	Freight depot	8,500
Mary street, south	Sam. Maverick	7,000	Dec., 1848	90x221	Freight depot	8,500
Mary street, south	Sam. Maverick	----------	Mar., 1838	30x224	Yard	800
Mary street, south	Nat. Heyward	400	Jan., 1834	40x218	Yard	1,000
Mary street, south	Nat. Heyward	5,000	Feb., 1849	120x215	Yard	2,500
Mary street, south	Thos. L. Bulow	7,000	Oct., 1855	99x180	Yard	1,200
Meeting street	Nat. Heyward	5,000	June, 1847	90x179	Yard	1,200
Amount carried forward.						$124,500
22 Amount brought forward.						$124,500
Mary street, north	J. Robinson	400	Jan., 1834	105x120	Yard	3,000
Mary street, north	Forrest Charity	5,720	Sept., 1835	294x309	Yard	8,500
Meeting street	J. McKeegan	2,000	Feb., 1856	30x100	Yard	500
Meeting street	Mrs. C. Wilson	2,750	June, 1847	63x267	Yard	2,000
Reid street, south	Est. Cobia	12,150	July, 1860	135x313	Yard	3,000
Reid street, north	Mary Johan	1,000	Oct., 1834	80x188	Yard	1,400
Reid street, north	Jane K. Wharton	175	Mar., 1850	2x90	Yard	200
Woolfe street, north	Jno. B. Martin	4,750	June, 1838	49.10x130	Yard	1,000
King street	E. Carson	300	Mar., 1834	44.6x59.6	Yard	500
Spring street, south	Est. Mary Belzer	450	Feb., 1843	48x62	Yard	500
Spring street, south	Jas. Ross	1,000	Aug., 1834	50x226	Yard	1,000
Spring street, south	W. P. Ingraham	1,300	Sept., 1847	100x212	Yard	2,000
Spring street, south	E. Woodworth	3,000	Dec., 1858	50x130	Yard	1,000
Spring street, south	Est. F. J. Cobia	2,025	May, 1861	51x87	1 building, wood.	1,500
Spring street, south	J. Pattina	4,000	Feb., 1867	87.6x147	Yard	1,000
Meeting street	A. Elfe	9,000	Apr., 1856	135x250	2 buildings, wood.	3,500
Spring street, north	J. C. You	2,800	Feb., 1835	220x91	Blacksmith shop and yard.	8,000
Spring street, north	R. Yeadon	5,050	May, 1847	274x256	Machine-shops	38,800
Columbus street, south.	Est. Mary You	1,000	Aug., 1834	110x180	4 buildings, wood.	3,200
Columbus street, south.	Master in equity	2,100	June, 1847	106x183	Round-house	12,000
Columbus street, north.	Marie Follin	1,800	Jan., 1848	133x160	Yard	3,000
Columbus street, north.	A. Henery	1,000	Aug., 1834	40x240	Yard	400
Line street, south	— Weissenger	600	June, 1834	32x244	Yard	400
Line street, south	J. P. Labatut	175	Nov., 1836	18x110	Yard	200
Line street, north	Commissioners	450	July, 1830	290x302	Passenger depot.	32,000
Line street, north	— Browning	480	April, 1853	30x145	Yard	500
Line street, north	J. R. & S. Stall	480	April, 1853	30x145	Yard	500
Line street, north	F. J. C. Patterson	950	June, 1856	30x145	Yard	500
Line street, north	T. Limehouse	380	April, 1853	30x145	Yard	500
Shepherd street, south.	T. Limehouse	380	April, 1853	30x145	----------	500

EXHIBIT C—Continued.

Location.	From whom purchased.	Cost.	Date.	Size.	How occupied.	Present value of each piece.
Shepherd street, south.	Z. B. Oakes	315	April, 1853	30x145	Yard and passenger depot.	2,500
Shepherd street, south.	J. R. & S. Stall	480	April, 1853	30x145	Yard	500
Amount carried forward.						$258,600
23 Amount brought forward.						$258,600
Romney street	Wm. Tyrell	100	May, 1830	25x600	Track	100
Romney street	T. Tupper	300	Sept., 1833	40x224	Track	300
Romney street	Wm. Aiken	500	Oct., 1837	100x400	Track	500
Shepherd street, north.	Dan. Blake	3,262	Sept., 1856	70x812	Track	1,500
Shepherd street, north.	Blake and Heyward.	24,560	Aug., 1859	280x800	Car-shed and yard.	12,000
Cooper River	Jas. Gadsden	7,500	July, 1853	7 acres	Unoccupied	2,500
Cooper River	A. V. Turner	10,000		43 acres	Unoccupied	4,000
Cooper River	John H. Thee	7,000	Mar., 1856	615x820	Unoccupied	2,500
Cooper River	Carew and Hacker	8,000	Mar., 1856	300x990	Unoccupied	3,000
Washington street	R. E. Dereef	17,000	April, 1870	128x	Wharf	15,000
Washington street	R. R. accom. wharf	75,000	April, 1870	1135x	Wharf	50,000
Washington street	Della Torre & Co.	12,000	July, 1870	272x224	Old saw-mill	10,000
Wharf street	Est. Jno. Ferguson	1,100	April, 1870	100x128	Unoccupied	900
Calhoun street	J. T. Welsman	10,000	June, 1870	120x1113	Unoccupied	7,000
Romney street	Ed. T. Malone	1,000	May, 1857	180x287	Track	1,000
Romney street	Jno. H. Pearson	9,015	July, 1859	7½ acres	Track and farm.	5,000
Russell street	A. O. Norris		May, 1855	44x304	Track	300
Total value of real estate						$374,200
Value of marine road extending from boundary of city to Hudson street, also side-tracks, being 6 miles and 791 feet						$25,000
Value of stationery engines, tools, machinery, etc., not including rolling-stock						20,750
Total value of personal property						$45,750
Total value of real and personal property						$419,950

Put in evidence March 9th, 1874.

Respectfully submitted,

S. LORD, JR.

JOHN N. GREGG,
City Appraiser.

24 And on the 16th day of April, 1874, came into the court the said city council of Charleston et al., defendants in the bill named, by Corbin and Stone, their attorneys, and filed their exceptions to the report of Samuel Lord, jr., special master, which exceptions is in the following words:

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In equity. April stated term, 1874.

THOMAS BRANCH, SONS & CO.
vs.
THE CITY COUNCIL OF CHARLESTON.

Exceptions to report.

Filed 16th day of April, 1874.

J. E. HAGOON,
C. C. C. U. S. Dist. S. C.

25 Exceptions taken by the said city council of Charleston et al., defendants in the bill named, to the report of Samuel Lord, jr., special master, to whom the said cause stands referred, made in pursuance of the order of April 19, 1873:

I. For that said master, by his said report, certified that within the limits of the city of Charleston the South Carolina Railroad Company has property, real and personal, to wit:

1. Value of improvements on the various lots of land, purchased by the South Carolina Canal and Railroad Company, prior to December, 1837, consisting of workshops, depots, &c., (p. 2)		$74,395
2. Various lots of land purchased since 1844, between King and Meeting streets, valued at	$177,400	
And lands on Cooper River, valued at	94,900	
		272,300
3. Six miles and 791 feet of main track and side track, valued at	$25,000	
And stationary engines and other machinery, valued at	20,750	
		45,750
Total		$372,445

26 And that all of said property was acquired by said company under its own charter for the joint accommodation of the entire system of roads under its control, and the same is to be apportioned as taxable and non-taxable, as 136, length of road from Charleston to Hamburg, is to 106, length of roads from Branchville to Columbia, and Kingville to Camden; that is, $221,174.05 of said property is taxable, and $171,070.95 is not taxable; whereas said master should have certified that all of said property was acquired for the accommodation of the line of, and is now held by virtue of the charter of, the South Carolina Canal and Railroad Company, (under which and the amendment thereof of December 20, 1832, Stat. at Large, vol. 8, p. 380, the railroad from Charleston to Hamburg was constructed,) and like all other property held under the provisions of that charter, and its amendments, said property is subject to taxation by the city of Charleston; and especially said master should have certified that the value of improvements put upon the various lots of land purchased by the South Carolina Canal and Railroad Company, prior to December, 1837, are subject to taxation. Said lands are certified as subject to taxation, and hence all improvements thereon, in the shape of "depots, workshops, railroad tracks, &c.," before or since 1843, must be held taxable.

That said improvements are superstructures and fixtures upon the said lands, and not separable therefrom.

And said master should have certified that said various lots of land, purchased by the South Carolina Railroad Company since 1844, lying between Meeting and King streets, valued at $177,400, are subject to taxation, and no part or proportion thereof is exempt from taxation.

That said property, though purchased since 1844, is held under the franchise granted by the State in 1827, 1828, and 1832 to the South Carolina Canal and Railroad Company. (Stat. at Large, vol. 8, pp. 354–5 and 380.)

That said lands are located on the line of said company's road, extending through nine squares of the city of Charleston, and are held for the accommodation of, and are an appendage and appurtenance of, said line, and are not held for the accommodation, and are not an appendage and appurtenance of, any other line of road.

And said master should have certified that said six miles and
27 791 feet of main track and side track, valued at $25,000, are a part of, and appurtenant to, the main line of railroad from Charleston to Hamburg, and the same is built upon the lands purchased by the South Carolina Canal and Railroad Company, and held, so far as relates to taxation, under the provisions of the charter of the South Carolina Canal and Railroad Company, and the same is subject to taxation.

And the said master should have certified that said lands on Cooper River, valued at $94,900, are subject to taxation, because, though it appears by Exhibit B that said lands were purchased in 1853, 1856, and 1870, for the ostensible purpose of establishing a depot on Cooper River, the same have never been used by the company, and cannot be used till the track is extended there three-fourths of a mile nearest route, and no line has yet been located or determined upon, and no time is or can be named by the company within which the connection with that point shall be made. That said property is not now used by, and is not now necessary for the use of, the company.

Further, said lands, when, if ever, required and used for the business of said company, or if regarded as necessary now to carry out its designs, will be used as an appendage and appurtenance to the line of road extending from Charleston to Hamburg.

And said master should have certified that said stationary engines and machinery, valued at $20,750, are subject to taxation, because he should have certified the same are upon and used upon lands purchased by the South Carolina Canal and Railroad Company, (especially the blacksmith-shop,) and lands adjoining thereto, and the same are an appendage of the line of road from Charleston to Hamburg, which has no claim to exemption from taxation.

II. For that said master, in his said report, certified that said South Carolina Railroad Company possesses, within the limits of the city of Charleston, certain parcels of real estate, purchased by the Louisville, Cincinnati and Charleston Railroad Company, from December, 1837, to 1844, valued at $2,300, and same are exempt from taxation; whereas said master should have certified that said property is subject to taxation, and certified further that it was not proven before him that
28 said company had ever constructed, under its own charter, any railroad within the limits of the city of Charleston, and said property is used wholly now, and has been, since the date of the purchase thereof, in connection with the line of the South Carolina Canal and Railroad Company, and the line of no other railroad company, and by said company used for side-tracks and depots.

And further, said property was actually purchased by the South Carolina Canal and Railroad Company, as proven by the plaintiffs in this cause, on a former occasion, by the same witness who testifies now, and said proof is of record in this cause.

III. For that said master, in his said report, certified that of the real estate acquired by the South Carolina Railroad Company, within the limits of the city of Charleston, $346,695 thereof was acquired by the said company for the joint accommodation of the entire system of roads under its control, whereas said master should have certified that it is

not and has not been fairly shown that any of the company's property in Charleston was acquired by the said company for the accommodation of the business belonging to its original roads, or for the joint accommodation of the entire system of roads under its control, because it appears from the report and testimony submitted by said master, that no evidence has been offered to show that the lines of road from Branchville to Columbia, and from Kingville to Camden, built by the South Carolina Railroad Company under its own charter, have ever been extended to Charleston, or that it has heretofore or is now contemplated extending them to Charleston, or that there is any real estate in the city of Charleston belonging to, used by, or appurtenant to said roads.

That the traffic over said roads to Charleston leaves said roads, one of them at Kingville and the other at Branchville, the last and nearest point to Charleston being sixty-two miles distant; that the real estate in Charleston, thus sixty-two miles distant from the nearest point of the lines of road constructed by the South Carolina Railroad Company, under its own charter, cannot in any proper sense be regarded as an appendage or appurtenance thereof, or as acquired for the accommodation thereof. As matter of fact this has not been proven.

CORBIN & STONE,
Solicitors for City of Charleston.

29 And on the 16th day of April, 1874, came into the court the said Branch, Sons & Co., plaintiffs, by their attorneys, Magrath & Lowndes, and the said South Carolina Railroad Company, defendants, et al., and filed their exceptions to the report of Samuel Lord, jr., special master, which exceptions are in the following words:

29½ United States circuit court, South Carolina district, fourth circuit.

30 THOMAS BRANCH, SONS & CO.,
vs.
THE CITY COUNCIL OF CHARLESTON AND OTHERS.

Exceptions to the report of Samuel Lord, jr., esq., filed in behalf of Thomas Branch, Sons & Co.

1. Because in the said report it is set forth that all of the property purchased from the South Carolina Canal and Railroad Company is liable to taxation, without any apportionment of the same; when, in the opinion of the Supreme Court of the United States in this case, it is expressly declared that, "if it can be fairly shown that any of the company's property in Charleston, claimed to be taxable, was acquired by the South Carolina Railroad Company for the accommodation of the business belonging to its original roads, or for the joint accommodation of the entire system of roads under its control, such property will pro tanto and in fair be exempt from taxation." And this is said directly in reference to the property of the South Carolina Canal and Railroad Company purchased by the South Carolina Railroad Company.

2. That in the opinion of the Supreme Court in Branch vs. Tomlinson, referred to in the report, as justifying and sustaining the conclusions of the referee concerning the liability of all property purchased from the South Carolina Canal and Railroad Company to taxation, without apportionment of any part thereof, there is nothing more positive as to the intention of that court in that respect than will be found in the same opinion in relation to the property of the South Carolina Railroad Com-

pany in which it is said, "had it been intended that the road and property of the old company should be owned and controlled by the new
31 company, under its own charter, in the same manner as its other property, it would have been so declared;" and this sustains the conclusion that such property, if acquired under the charter of the South Carolina Railroad Company, was exempt from taxation.

3. That the referee misapprehended the intention of the Supreme Court in supposing that it intended to hold the line of the road from Charleston to Branchville liable to taxation without qualification, when the reference to it by the Supreme Court was regarding it as property of the South Carolina Canal and Railroad Company, which as such would be subject to taxation, unless acquired for the original roads of the South Carolina Railroad Company, in which case, or if acquired for the use of the roads under its control, it became taxable pro tanto and in fair proportion to the uses for which it was obtained.

4. That if the property of the South Carolina Railroad Company, acquired directly under its own charter, is exempt from taxation as such, but is taxed in any proportion because of its use in connection with the road from Charleston to Hamburg, the same rule must be necessarily applied to property of the South Carolina Canal and Railroad Company, which, if per se it is subject to taxation, should have that taxation apportioned and be assessed pro tanto, so far as it is used by the South Carolina Railroad Company under its own charter, and held as its own property.

5. And such is clear to have been the meaning of the Supreme Court, when it is seen that all of the property of the South Carolina Railroad Company has been acquired by it partly under its charter and partly by the authority of the legislature of the State, in regard to that portion of it which did belong to the South Carolina Canal and Railroad Company. That property so acquired might be liable to taxation, regulated by the uses and purposes for which it had been acquired,
32 and therefore could only be taxed pro tanto, while that property which was obtained under a charter expressly exempting it could not be taxed.

6. That the referee was mistaken in supposing, from the language of the opinion of the Supreme Court in reference to the line from Charleston to Hamburg, that it was intended to declare that all the property acquired from the South Carolina Canal and Railroad Company was taxable absolutely; and this is made apparent from the language in the opinion of the Supreme Court in this case in relation to the depots in Charleston, which are prima facie taxable as property acquired from the South Carolina Canal and Railroad Company. But although prima facie liable, if used for purposes connected with other roads they then become taxable only proportionably.

7. That the referee should have reported that, in the opinion of the Supreme Court, prima facie the property of the South Carolina Canal and Railroad Company was taxable; but if obtained from that company by the South Carolina Railroad Company for its original roads or the roads under its control, taxation on such property should be estimated in fair proportion for the uses for which it was acquired and enjoyed.

8. Because in these respects the said report is not consistent with the opinion of the Supreme Court of the United States in this case, and should be recommitted to the referee to report accordingly.

9. That property acquired by the South Carolina Railroad Company under its own charter, and for purposes connected with the roads contemplated in its charter, if also used for purposes connected with the

The same rule is also to be applied to the stationary engines, tools, machinery, & so forth reported by the master as of the value of $20,750.

All other exceptions by plaintiff & defendant are overruled, &
38 the report of the master, except as hereinabove modified, is confirmed & made the decree of the court, and the costs of these further proceedings must be divided between the parties to the suit.

HUGH L. BOND,
Ct. Judge.

APRIL 27TH, 1874.

And thereupon, in open court, came the said Branch, Sons & Co., by Magrath & Lowndes, their solicitors, and prayed and appeal from the said decree to the Supreme Court of the United States, which appeal is hereby granted, and the said South Carolina Railroad Company, by Porter & Conner, its solicitors, joined in said appeal.

And also come the said city council of Charleston, by Corbin & Stone, its solicitors, and prayed an appeal from the said decree to the Supreme Court of the United States, which said appeal is in the words and tenor following:

UNITED STATES OF AMERICA,
District of South Carolina, 4th circuit.

Stated term of the circuit court, begun and holden on the first Monday of April, A. D. 1874.

BRANCH, SONS & CO.
vs.
39 THE CITY COUNCIL OF CHARLESTON ET AL.

To the honorable the judges of the circuit court:

Now comes the city council of Charleston et al., by their attorneys, Corbin & Stone, and prays an appeal to the Supreme Court from the decree of this court, entered in this cause, for that the exceptions taken by the said city council to the report of the special master, Samuel Lord, jr., should have been sustained.

CORBIN & STONE,
Solicitors for City Council of Charleston.

And thereupon the appeal was granted in the words and tenor following:

Let the appeal be granted on the usual terms.

HUGH L. BOND,
Ct. Judge.

And also came into the court Branch, Sons & Co., by their attorneys, Magrath & Lowndes, and the said city council of Charleston, by their attorneys, D. T. Corbin , and filed the following agreement, which is in the words and tenor following:

40 BRANCH, SONS & CO.
vs.
THE CITY COUNCIL OF CHARLESTON
et. al.

Plaintiffs and defendants having each appealed from the decree of the

circuit court in the above cause, it is agreed that the supersedias bond on each appeal is waived, and that if either party shall hereafter require a supersedias bond to be given, the same shall be entered on ten days' notice. The bond so entered to be in all respects as it entered on taking the appeal, and to have like effect.

The bond for costs is also mutually waived.

D. T. CORBIN,
Solicitor for City of Charleston.
A. G. MAGRATH,
For Branch, Sons & Co.
PORTER & CONNER,
For South Carolina R. R. Company.

JUNE 4, 1874.

BRANCH, SONS & CO.
vs.
CITY COUNCIL OF CHARLESTON ET AL.

The plat of the property of the South Carolina R. R. Co.
41 and the city of Charleston, refer'ed to in the report of Samuel Lord, jr., special master, being complicated and difficult to copy, it is agreed that copies thereof shall made and submitted by counsel upon the argument of the cause in the Supreme Court of the United States, and that a copy thereof need not now be incorporated in the record.

CORBIN & STONE,
Solicitors for City Council.
JAMES CONNER,
Sols. for S. C. R. R.
MAGRATH & LOWNDES,
Sols. for Branch, Sons & Co.

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit :

OFFICE CLERK OF CIRCUIT COURT.

I, J. E. Magoon, clerk of the said court, do hereby certify that the foregoing thirteen pages of written matter, and twenty-nine pages of printed matter, is a correct copy of the records and proceedings of the decree in this cause, had at the April term, 1874, of said court, in the case of Thomas Branch, Sons & Company, against the City Council of Charles
ton, South Carolina, The South Carolina Railroad et. al.,
42 rendered as aforesaid, together with all things relating to the same, as appears by the original papers now on file in this office.

Given under my hand and seal of said court at clerk's office in the city of Charleston, So. Carolina, this the 6th day of June, 1874.

[SEAL.]

J. E. MAGOON,
C. C. C. U. S. Dist. of S. C.

(Indorsement on cover:) No. 443, Branch, Sons & Company & the South Carolina Railroad Company, appellants, vs. The City Council of Charleston & al., and No. 444. The City Council of Charleston et al., appellants, vs. Branch, Sons & Company, So. Carolina. C. C. U. S. Filed 7th July, 1874.

RECS. 443–444—3

SUPREME COURT

OF THE

UNITED STATES.

BRANCH, SONS & CO. AND THE SOUTH CAROLINA RAILROAD COMPANY,

APPELLANTS,

vs.

THE CITY COUNCIL OF CHARLESTON.

BRIEF OF

A. G. MAGRATH AND JAMES CONNER,

FOR APPELLANTS.

CHARLESTON, S. C.
THE NEWS AND COURIER JOB PRESSES.
1876.

IN THE SUPREME COURT

OF THE UNITED STATES.

BRANCH, SONS & CO.

vs.

THE CITY COUNCIL OF CHARLESTON, ET AL.

Appeal from the Circuit Court of the United States for the District of South Carolina.

STATEMENT OF THE CASE.

In 1828, the South Carolina Canal and Railroad Company was incorporated, to construct a Railroad from Charleston to Hamburg, Columbia, and Camden. Exemption from taxation, for thirty-six years from the completion of the Road, was granted. The Road was completed in 1833.

In 1835, the Louisville, Cincinnati and Charleston Railroad Company was incorporated, for the purpose of "establishing communication by Railroad" between Charleston and Cincinnati.

In 1837, the Louisville, Cincinnati and Charleston Railroad Company purchased the Road and property of the Canal and Railroad Company, and used the Road of the

latter between Charleston and Branchville, instead of building a separate Road. It, also, used as its own, the depot, warehouses, and other property of the Canal and Railroad Company in the City of Charleston, and purchased additional land for depots, etc.

In 1843, the name of the Louisville, Cincinnati and Charleston Railroad Company was changed to that of the South Carolina Railroad Company, and the Canal and Railroad Company merged in the South Carolina Railroad Company.

In 1868, the City of Charleston claimed the right to tax the entire property of the South Carolina Railroad Company, situate within the City limits. The Decree below sustained the exemption of the South Carolina Railroad Company. The City Council appealed, and, at December Term, 1872, the Supreme Court prescribed the rule for the taxation of the property within the City, and remanded the case to the Circuit Court, "with directions to proceed in conformity with this opinion." See 15 Wallace, 471.

The Circuit Court referred the cause to a Special Master to report:

1st. What property of the South Carolina Railroad Company was acquired by it for the accommodation of the business of its original Roads, or for the joint accommodation of the entire system of Roads under its control, and, if such property, how much, and in fair proportion, should be exempt from taxation?

2d. What property of the South Carolina Railroad Company has been acquired by it directly under its own charter, and for purposes connected with its original Road, that such property may be decreed exempt from taxation?

3d. What property, if any, besides that not directed to be apportioned, and that acquired by the South Carolina Railroad Company under its own charter, and belonging to the South Carolina Railroad Company, is exempt from taxation? (Folios 2, 3, 5.)

The Master reported, that the property of the South Car-

olina Railroad Company, within the City limits, consisted of—

1. Lands purchased by the Canal and Railroad Company prior to December, 1837, and vested in the South Carolina Railroad Company by Act of 1843. (Folio 6.) Their value, when acquired by the South Carolina Railroad Company, was $25,205

But the South Carolina Railroad Company put upon them depots, workshops, and other improvements to amount of 74,395

Making aggregate value $99,600

2. Lands purchased by Louisville, Cincinnati and Charleston Railroad Company, between December, 1837, and February, 1843, value 2,300

3. Lands purchased since 1843, folio 7 ... $177,400
Lands purchased since 1843, Cooper River 94,900
——— 272,300

4. Six miles main and side tracks, folio 10 . $25,000
Stationary engines and machinery 20,750
——— 45,750

$419,950

The Master then applied the decision of the Supreme Court to the facts found, and made certain rulings thereon. (See folios 8 to 11.)

To this Report of the Master both Complainants and Defendant excepted. (Folios 25 to 30.)

The cause came on to be heard on the Report of the Master and the exceptions thereto; and the Decree of the Circuit Court, overruling the Master in some particulars, and confirming the Report in all other respects, held:

1. That all lands acquired from the Canal and Railroad Company, although "acquired and used by the South Caro-

lina Railroad Company for the joint accommodation of the entire system of Roads under its control," were liable to taxation in full. (Folio 8.)

2. That the improvements put upon said lands ($74,395) by the South Carolina Railroad Company were taxable in like manner as the lands. (Folio 37.)

3. That only the lands, acquired by the Louisville, Cincinnati and Charleston Railroad Company prior to 1843, were entirely exempt from taxation. (Folio 8.)

4. That all the property acquired by the South Carolina Railroad Company since 1843 ($272,300), was taxable in the proportion of 136 to 106.

5. That the tracks and personal property in the City, $45,750, being used for joint accommodation of the entire system of Roads under its control was taxable *pro tanto*, as 136 to 106.

And Branch, Sons & Co. and the South Carolina Railroad Company duly appealed, and make the following:

ASSIGNMENT OF ERRORS.

I. That the Master reported that *all* of the property purchased from the South Carolina Canal and Railroad Company was liable to taxation, and was not subject to apportionment, and the Circuit Court (folio 37) overruled the exceptions taken by Branch, Sons & Co., which were as follows—(folio 30):

1. Because in the said Report it is set forth that all of the property purchased from the South Carolina Canal and Railroad Company is liable to taxation, without any apportionment of the same; when, in the opinion of the Supreme Court of the United States in this case, it is expressly declared, that "if it can be fairly shown that any of the Company's property in Charleston, claimed to be taxable, was acquired by the South Carolina Railroad Company for the accommodation of the business belonging to its original Roads, or for the joint accommodation of the entire system

of Roads under its control, such property will *pro tanto* and in fair be exempt from taxation." And this is said directly in reference to the property of the South Carolina Canal and Railroad Company purchased by the South Carolina Railroad Company.

2. That in the opinion of the Supreme Court, in Branch vs. Tomlinson, referred to in the Report, as justifying and sustaining the conclusions of the Referee concerning the liability of all property purchased from the South Carolina Canal and Railroad Company to taxation, without apportionment of any part thereof, there is nothing more positive as to the intention of that Court in that respect, than will be found in the same opinion, in relation to the property of the South Carolina Railroad Company, in which it is said " had it been intended that the Road and property of the old Company should be owned and controlled by the new Company, under its own charter, in the same manner as its other property, it would have been so declared;" and this sustains the conclusion that such property, if acquired under the Charter of the South Carolina Railroad Company was exempt from taxation.

3. That the Referee misapprehended the intention of the Supreme Court in supposing that it intended to hold the line of the Road from Charleston to Branchville liable to taxation without qualification. When the reference to it, by the Supreme Court was regarding it as property of the South Carolina Canal and Railroad Company, which, as such, would be subject to taxation, unless acquired for the original Roads of the South Carolina Railroad Company: in which case, or if acquired for the use of the Roads under its control, it became taxable *pro tanto* and in fair proportion to the uses for which it was obtained.

4. That if the property of the South Carolina Railroad Company acquired directly under its own Charter, is exempt from taxation as such; but is taxed in any proportion because of its use in connection with the Road from Charleston to Hamburg; the same rule must be necessarily applied

to property of the South Carolina Canal and Railroad Company; which, if *per se* it is subject to taxation, should have that taxation apportioned and be assessed *pro tanto*, so far as it is used by the South Carolina Railroad Company under its own Charter, and held as its own property.

5. And such is clear to have been the meaning of the Supreme Court when it is seen, that all of the property of the South Carolina Railroad Company has been acquired by it partly under its Charter, and partly by the authority of the Legislature of the State, in regard to that portion of it which did belong to the South Carolina Canal and Railroad Company. That property, so acquired, might be liable to taxation, regulated by the uses and purposes for which it had been acquired, and therefore could only be taxed *pro tanto;* while that property which was obtained under a Charter expressly exempting it, could not be taxed.

6. That the Referee was mistaken in supposing, from the language of the opinion of the Supreme Court in reference to the line from Charleston to Hamburg, that it was intended to declare that all the property acquired from the South Carolina Canal and Railroad Company was taxable absolutely; and this is made apparent from the language in the opinion of the Supreme Court in this case in relation to the Depots in Charleston, which are *prima facie* taxable as property acquired from the South Carolina Canal and Railroad Company. But, although *prima facie* liable, if used for purposes connected with other Roads, they then become taxable only proportionably.

II. That the Master reported that the improvements put upon the lands of the Canal and Railroad Company by the South Carolina Railroad Company were apportionable; to this, exception was taken by the City Council, "that said improvements are superstructures and fixtures upon the said lands, and not separable therefrom." (Folio 26.) And the Court sustained the exception.

III. That the Master reported, that only the property acquired by the Louisville, Cincinnati, and Charleston Rail-

road Company previous to 1843, was exempt from taxation (folio 8); and exception being taken thereto by Branch, Sons & Co. (folio 30 to 33), the Court overruled the exceptions. (Folio 37.)

IV. That the Master reported, that the property acquired by the South Carolina Railroad Company after 1843, was taxable *pro tanto*, as 136 to 106 (folios 9 and 10); and the Court overruled the exceptions taken by Branch, Sons & Co. (folio 30), which exceptions were as follows—(folios 32 and 33):

9. That property acquired by the South Carolina Railroad Company under its own Charter, and for purposes connected with the Roads contemplated in its Charter, if also used for purposes connected with the line from Charleston to Hamburg, would not thereby become liable to taxation. And this is particularly so in regard to the property on Cooper River; the public necessities for which were and are so great, that the construction of the line leading to the wharves of the City, has been recognized as that which the State itself should undertake, if it could not otherwise be done.

10. That the principles which should have guided the Referee in his Report are these: property which belonged to the South Carolina Canal and Railroad Company, and from it purchased by the South Carolina Railroad Company, if now in the possession of the latter named Company, existing in specie, is *prima facie* taxable; if so existing and so acquired, it is partly used for the purposes of the South Carolina Railroad Company in connection with the Roads of that Company, then its liability to taxation is apportioned according to such uses; if the property has been acquired by the South Carolina Railroad Company directly under its own Charter and for purposes connected with its original Roads, such property is exempt from taxation.

ARGUMENT.

We contend for the following propositions:

I. That when the Court found, as matter of fact, that the lands acquired from the Canal and Railroad Company were "acquired and used by the South Carolina Railroad Company for the joint accommodation of the entire system of Roads under its control," as it did (folio 8), it followed, as a conclusion of law, announced by the Supreme Court, that "such property was *pro tanto*, and in fair proportion exempt from taxation," and the Circuit Court should have so held.

II. That even if the lands, purchased by the South Carolina Railroad Company from the Canal and Railroad Company are taxable *in toto*, still the improvements put upon them by the South Carolina Railroad Company to adapt them to the uses of the South Carolina Railroad Company, represent the capital of the South Carolina Railroad Company, and are exempt from taxation, or, at most, are apportionable *pro tanto*.

III. That all "the property acquired by the South Carolina Railroad Company directly under its own Charter and for purposes connected with its original Road," whether purchased by the Louisville, Cincinnati, and Charleston Railroad Company prior to 1843. or by the South Carolina Railroad Company after 1843, is exempt from taxation.

All the property of the South Carolina Railroad Company in the City of Charleston is used for the joint accommodation of the entire system of Roads under its control. (Record folios 7, 8 and 35. Mr. Corbin's Brief, folio 63.)

All this property was acquired by the South Carolina Railroad Company, either:

I. From the Canal and Railroad Company; *or*,

II. By purchase, directly under its own Charter, from private persons.

With these, as the undisputed facts of the case, let us see the law applicable to them. It is set forth in the Decree of the Court (15 Wallace, p. 471): "The principles, laid down in the preceding case, must be applied to this. All parts of the Road and property formerly belonging to the South Carolina Canal and Railroad Company, and all appendages and appurtenances thereof, are liable to taxation; whilst all property acquired by the South Carolina Railroad Company directly under its own Charter, and for purposes connected with its original Road, is exempt from taxation. *Prima facie* the Railroad terminus and depot in Charleston, and the property accessory thereto, belong to the South Carolina Canal and Railroad Company portion of the joint property. But if it can be fairly shown that any of the Company's property in Charleston, claimed to be taxable, was acquired by the South Carolina Railroad Company for the accommodation of the business belonging to its original Roads, or for the joint accommodation of the entire system of Roads under its control, such property will, *pro tanto*, and in fair proportion, be exempt from taxation."

The Court announces two principles:

I. "All parts of the Road and property formerly belonging to the South Carolina Canal and Railroad Company, and all appendages and appurtenances thereof are liable to taxation."

II. "All property acquired by the South Carolina Railroad Company directly under its own Charter, and for purposes connected with its original Road, is exempt from taxation."

We propose to take up first the property formerly belonging to the Canal and Railroad Company:

I. The property in the City, acquired from the Canal and Railroad Company, was land of the value of $25,205. The South Carolina Railroad Company has put upon it improvements—depots, warehouses, etc.—to the value of $74,395. By the Decree of the Court this is all taxable.

In this, we allege error, and claim that only the $25,205

(the land) is taxable; that the improvemeuts are exempt, or, at the utmost, that the whole—land and improvements—are apportionable.

What, by the decision of this Court, is taxable? "The property *formerly* belonging to the Canal and Railroad Company." All that formerly belonged to the Canal and Railroad Company is the land. The improvements did not belong to the Canal and Railroad Company, and to tax them is to tax something which never belonged to the Canal and Railroad Company.

A reference to the case of Tomlinson vs. Branch makes this still more clear. The principles laid down in that case are to govern this; and that case decides:

That the property of the Canal and Railroad Company in possession of the South Carolina Railroad Company was to be held by it exactly as it would have been held by the Canal and Railroad Company had no transfer been made. The obligations, including liability to taxation, attached to the property, and accompanied it, and the State was to gain nothing and lose nothing by the transfer.

"The restrictions, limitations, and burdens affecting that property (*i. e.* the property transferred) go with it"—p. 464; and, again, p. 465: It is "the legislative intent, that such property was to be holden in the *same manner* and subject to the same rights as before;" and, on same page: "The owners of the property were to lose no rights by the transfer, nor was the public to lose any rights thereby." Again, on page 466, applying the principles of the case of the Philadelphia, Wilmington, and Baltimore Railroad Company vs. Maryland, the Court "considered the evident meaning of the law to be, that whatever privileges and advantages either of the former Companies possessed should in like manner be held and possessed by the new Company, to *the extent of the Road* which the said former Companies had respectively occupied before the union; that it should stand in their place, and possess the power, rights, and privileges they had severally enjoyed in the portions of the Road, which had previously belonged to them."

These citations show that the property, now taxable, is the property which was taxable at the time of the transfer—neither more nor less. If less is taxed, the State loses. If more is taxed, the State gains, and she was neither to gain nor lose by the transfer.

It is said that the buildings, put upon the land, are appendages and appurtenances to the land, and are taxable with it. We answer, that appendages and appurtenances, strictly speaking, do not include things corporeal (Bouvier's Law Dict), and a house cannot be said to be appendant or appurtenant to the land.

The house, and the land on which it is built, may be separate and distinct properties, as in cases of buildings erected upon glebe land. [Where the land is non-taxable, but the buildings on the land taxable. See City Council of Charleston vs. the Vestry of St. Phillip's Church. 1 McMullan Eq., 146.] Or ground rent, where the land is taxable to one, and the buildings to another.

But even if the words are not to be taken in a technical sense, still what are the appendages and appurtenances, which are to be taxed. The appendages and appurtenances, which belonged to the Canal and Railroad Company; for it is as property of the Canal and Railroad Company that it is taxable, and what was not their property is not within the rule.

The buildings, put upon the land, represent the investment of so much capital of the South Carolina Railroad Company, which, under the Charter of that Company, was exempt from taxation. Before the investment, the fund was, of the Company as property, non-taxable. After its investment in buildings, it still remained the property of the Company. What principle makes it taxable in the one case, and not in the other?

The buildings and the land represent distinct interests, each ascertained and each to be regulated by its own Charter. To ignore the distinction and to tax the whole, as property of the Canal and Railroad Company, or to ex-

empt the whole, as property of the South Carolina Railroad Company, would equally be at variance with the decision of this Court.

We claim that the $25,205 is alone taxable—the improvements are exempt. Whether, under the other portion of the Decree, any or all of it is apportionable, we will consider hereafter.

Having considered the status of the property acquired from the Canal and Railroad Company, we come to:

II. That acquired by the South Carolina Railroad Company directly under its own Charter from private persons.

A small portion of this was purchased by the Corporation, under its name of Louisville, Cincinnati and Charleston Railroad Company. The residue, under its present name of South Carolina Railroad Company. But whether, under the one name or the other, it was all purchased directly under the Charter, paid for with corporate funds, conveyed to the Corporation, and is held by it for purposes connected with its original Road. As to such property, so acquired and held, the decision of this Court is clear—it is exempt from taxation.

But the Decree below only exempts that portion which was conveyed to the Louisville, Cincinnati and Charleston Railroad Company, and taxes *pro tanto* that conveyed to the South Carolina Railroad Company. The distinction is untenable, and rests on no principle.

The Charter of the South Carolina Railroad Company is the Charter of the Louisville, Cincinnati and Charleston Railroad Company. The Corporation remained the same—the name alone was changed. It is difficult to see how, of two pieces of property purchased under the same Charter, and conveyed to the same Corporation, and held and used exactly alike, one shall be taxable, because in one name, and the other exempt, because in a different name.

Nor is it easy to see why the property purchased prior to 1843 should have a different standing from that purchased after 1843.

When or under what name the property was purchased by the Corporation is immaterial. The question is under what Charter was it acquired? To that there can be but one answer. The Charter of the South Carolina Railroad Company, for no other existed. The Charter of the Canal and Railroad Company was extinguished by the Act of 1843. It ceased to be a Corporation. The case of Tomlinson vs. Branch is explicit on this point:

"The rights and privileges of the old Company, which attached to the property, were transferred with the property;" but, says the Court: "Of course these remarks do not apply to those corporate rights and franchises of the old Company, which appertain to its existence and functions as a Corporation. These became merged and extinct." (Page 465.)

After 1843, the power to acquire property existed only in the Charter of the South Carolina Railroad Company, and when purchased the exemption of the Charter attached to it. (See Mr. Corbin's Brief, folio 47.)

The purchases after 1843, as well as before 1843, were not only made under the Charter, but for purposes authorized by the Charter, or, as this Court puts it, "for purposes connected with its original Road."

By the Act of 1835—the Charter—the Company was incorporated "for the purpose of establishing a communication by Railroad between Cincinnati and Charleston"—Sec. 1, 8 Stat., 409—"so as to form a continuous line of Railroad between the Cities of Cincinnati and Charleston." Sec. 17, 8 Stat., 412. The termini of the Road were Cincinnati and Charleston.

Although the Louisville, Cincinnati and Charleston Railroad Company had to acquire the Road of the Canal and Railroad Company, and, with it, as is now decided, the liability to taxation of that Road, the Road was, nevertheless, the original Road of the Louisville, Cincinnati and Charleston Railroad Company, starting from the one terminus fixed by the Charter, and extending towards the other as far as

its means permitted. This is not merely our construction; it is the legislative construction.

In 1840, prior to any amalgamation, (which was in 1843,) the Legislature authorized the Louisville, Cincinnati and Charleston Railroad Company, by and with the consent of the City Council of Charleston, "to extend *their* Railroad to some one or more of the wharves in Charleston." (6 §, 11 Stat., p. 141.) What Road was to be extended through the City to the wharves? The Road of the Louisville, Cincinnati and Charleston Railroad Company, whose terminus was just outside the City limits. In the face of this legislation it is impossible to say that the Road from Charleston to Branchville was not the Road of the Louisville, Cincinnati and Charleston Railroad Company, *alias* South Carolina Railroad Company.

For the purposes of that Road, these lands were purchased by it directly under its Charter, and therefore exempt.

It only remains to consider the status of the personal property, $45,750.

Under this head is included the superstructure of the main and side tracks in the City. The *land* on which these tracks rest is included in the schedule of lands taxable.

There are two miles of main track and four of side tracks in the City. The main track is undoubtedly built on lands or right of way of the Canal and Railroad Company. The side track on lands of both Companies. All the superstructure was built by the South Carolina Railroad Company, for the entire system of Roads under its control; and this fact and the difficulty of dividing the track upon the several lots, has led the Master to regard the whole of the superstructure as apportionable, and he has so found, and the Court has sustained it.

Strictly, the side tracks, being all constructed by the South Carolina Railroad Company, would be exempt. The argument is earnestly pressed by the Counsel for the City, that the buildings erected on lands of the Canal and Railroad

Company and the superstructure—the tracks—are to be governed by the same rules. We think they should be—that in principle they are the same, that the two miles of main track, as formerly belonging to the Canal and Railroad Company are taxable, and the four miles of side track, having been constructed by the South Carolina Railroad Company, and mainly on land purchased by itself, are exempt; but the practical difficulty of separating them led the Court to treat the whole as personal property, used jointly and therefore apportionable. We have accepted it as a fair and reasonable, if not strictly accurate, application of the law.

If this case is to rest on the principles laid down in Tomlinson vs. Branch, and announced by the Court in this case, then:

1st. The property acquired from the Canal and Railroad Company would be taxable as it then stood.

2d. The buildings added by the South Carolina Railroad Company would be exempt; and,

3d. The property purchased by the South Carolina Railroad Company directly under its own Charter whether in the name of the Louisville, Cincinnati, and Charleston Railroad Company, or the South Carolina Railroad Company, would be exempt.

But after laying down the principles which we have cited in the earlier portion of the argument, the Court continues: "*Prima facie* the Railroad terminus and depot in Charleston, and the property accessory thereto, belong to the South Carolina Canal and Railroad Company portion of the joint property."

The facts were not then before the Court. If it had been as the Court supposed, that the Railroad depot and terminus belonged to the Canal and Railroad Company portion of the joint property, no question would have arisen; it would have been taxable on the principles announced. But the facts were not as supposed; only a small portion of the

depot and terminus belonged to the Canal and Railroad Company—the great bulk of it was acquired under the Charter of the South Carolina Railroad Company, (folios 18 and 19.) Consequently the principles did not apply, and as if to meet that contingency, the Court adds: "But if it can be fairly shown that any of the Company's property in Charleston, claimed to be taxable, was acquired by the South Carolina Railroad Company for the accommodation of the business belonging to its original Roads, or for the joint accommodation of the entire system of Roads under its control, such property will, *pro tanto*, and in fair proportion be exempt from taxation."

It is on this clause that the main difficulty arises. One of two constructions must prevail. It is either a modification of the principle I, that "all parts of the Road and property formerly belonging to the South Carolina Canal and Railroad Company, and all appendages and appurtenances thereof are liable to taxation;" or it is the announcement of a new and third principle, which overrides and displaces both the previous ones, and substitutes a different rule of taxation. Of course this latter conclusion cannot be sustained if any other rational interpretation can be put upon the clause.

The Court says: "*Prima facie*, the Railroad terminus and depot in Charleston" belong to the Canal and Railroad Company portion of the joint property. "But if it can be fairly shown that ANY OF THE COMPANY'S property claimed to be taxable was acquired by the South Carolina Railroad Company for the accommodation of the business belonging to its original Roads, or for the joint accommodation of the entire system of Roads under its control, such property will, *pro tanto*, and in fair proportion, be exempt from taxation."

Which Company is referred to in the words, "any of the Company's property?" Is it the Canal and Railroad Company, or the South Carolina Railroad Company? The natural and grammatical construction indicates, we think, that

it refers to the Canal and Railroad Company; that is, the antecedent and the context equally indicates it.

The Court had said, *prima facie*, the depot and terminus belong to the Canal and Railroad Company, and as such would be taxable. But if it can be shown that any of the Company's property—what property? The property of which it was then speaking—the Canal and Railroad Company property.

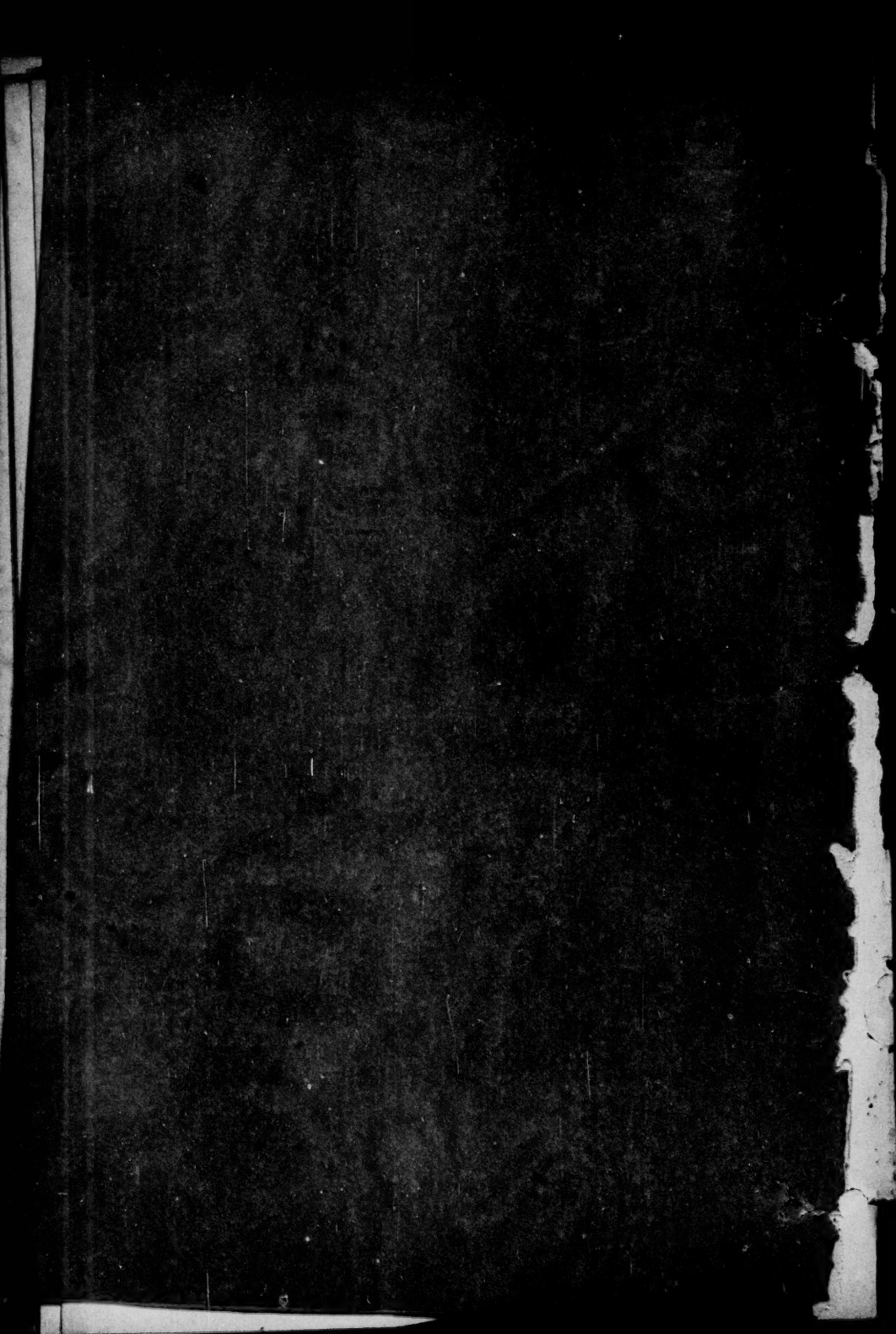
This construction harmonizes the whole opinion, and it would then read—all property acquired by the South Carolina Railroad Company directly under its own Charter, etc., is exempt. All property formerly belonging to the Canal and Railroad Company is taxable; but if you can show that such property was not solely for the Canal and Railroad Company purposes, but was acquired for joint accommodation, then it shall be taxable only *pro tanto*. These conclusions, we think, follow logically.

But suppose the other view is adopted, and you read the word "Company" as referring to the South Carolina Railroad Company. Such construction would utterly override the two principles announced in the opening of the opinion. The record shows that all the property in Charleston is used by the South Carolina Railroad Company "for the joint accommodation of the entire system of Roads under its control."

The property belonging to the Canal and Railroad Company would then not be taxable, and that acquired by the South Carolina Railroad Company, under its own Charter, would not be exempt, but both would be taxable *pro tanto*. It would be immaterial whether the property was acquired under the Canal and Railroad Company Charter, which gave no exemption, or under the South Carolina Railroad Company Charter, which absolutely exempted. The taxability would depend not upon the Charter privileges, but in the use of the land; and we are all agreed that the Charter determines the taxation or non-taxation. (See Mr. Corbin's Brief, folio 71.)

This construction makes the portions of the Decree referred to inconsistent with each other, and with the respective Charters, and at variance with the principles decided in the case of Tomlinson vs. Branch. The construction which harmonizes all parts of the decision must be preferred to that which makes the Decree inconsistent, and creates an antagonism between its several propositions.

A. G. MAGRATH,
JAMES CONNER,
Counsel for Branch, Sons & Co. and S. C. R. R. Co.



SUPREME COURT OF THE UNITED STATES.

CITY COUNCIL OF CHARLESTON,

APPELLANTS,

vs.

BRANCH, SONS & CO.

FROM THE CIRCUIT COURT OF THE UNITED STATES FOR DISTRICT OF SOUTH CAROLINA.

ARGUMENT ON BEHALF OF THE CITY COUNCIL.

D. T. CORBIN, *Solicitor.*

CHARLESTON, S. C.:
WALKER, EVANS & COGSWELL, PRINTERS,
Nos. 3 Broad and 109 East Bay Streets.
1874.

UNITED STATES OF AMERICA.

SUPREME COURT.

BRANCH, SONS & CO.,

vs.

CITY COUNCIL OF CHARLESTON.

ARGUMENT FOR CITY COUNCIL.

STATEMENT.

When this case was first before this Court, (15th Wal., 470,) the question was whether the property of the South Carolina Railroad Company was subject to taxation. The Court held 1
that it was *sub modo*. It was argued, and decided in connection with the case of Tomlinson *vs.* Branch, embracing the same property and questions, (15th Wal., 460.) In Tomlinson *vs.* Branch, the property of South Carolina Railroad Company (p. 460) was ascertained to have been derived from two sources; one portion, being the Railroad from Charleston to Hamburg, constructed by, and formerly the property of, the South Carolina Canal and Railroad Company, and the other portion, being a Railroad extending from Branchville (a station on said first Road from Charleston to Hamburg) to Columbia, with a 2
branch to Camden. A map of the two Roads is given.

After an examination of the charter under which the Road from Charleston to Hamburg was constructed, and the Act consolidating said line of Road with said other line of Road and its charter, the Court came to the conclusion "that, as to the

Road, property and works appertaining to the main line from Charleston to Hamburg, the South Carolina Railroad Company has no claim to exemption from taxation." (P. 465.) The Court also said that the decision in the case of the Philadel-
3 phia, Wilmington, and Baltimore Railroad Company *vs.* Maryland, 10 H., 376, was directly in point, (p. 466,) and governed this branch of the case. The Court further came to the conclusion, that "that part of the line" (from Branchville to Columbia, with the branch to Camden,) "is exempt from taxation." (P. 470.)

In a note to this decision the Court disposes of the case, City of Charleston *vs.* Branch, as follows: "The principles laid down in the preceding case must be applied to this. All parts of the road and property formerly belonging to the South Carolina
4 *Canal* and Railroad Company, and all appendages and appurtenances thereof, are liable to taxation; whilst all property acquired by the South Carolina Railroad Company, directly under its own charter, and for purposes connected with its original road, is exempt from taxation. *Prima facie*, the railroad terminus and depot, in Charleston, and the property accessory thereto, belong to the South Carolina Canal and Railroad Company portion of the joint property. But if it can be fairly shown that any of the Company's property in Charleston, claimed to be taxable, was acquired by the South Carolina Railroad Com-
5 pany for the accommodation of the business belonging to its original roads, or for the joint accommodation of the entire system of roads under its control, such property will, *pro tanto*, and in fair proportion, be exempt from taxation."

The case was remitted to the Circuit Court, with directions to proceed in conformity with this opinion.

The Court below referred the case to a Master, who reports:

"The Real Estate within the present limits of the City of Charleston, now owned by the South Carolina Railroad Company, consists of two separate and well defined parcels of land,
6 which are delineated with sufficient accuracy, for the purposes of this case, on the plat, herewith filed as Exhibit A. The first is a long, narrow strip of land, lying between Meeting and King

streets, and extending from Hudson street to the northern boundary of the city. Upon this, the depots, shops, yards, and railroad tracks of the Company are located. I file herewith, as Exhibit B, a statement showing the location of each piece of land, from whom purchased, the cost price, the date of purchase, the dimensions, how occupied, and its value according to a recent appraisement made by commmissioners appointed partly by the City and partly by the Railroad Company. It will be 7
seen by reference to this statement that this property embraces:

1st. Various lots, purchased by the South Carolina Canal and Railroad Company, prior to December, 1837, and vested in the South Carolina Railroad Company, by the act of 1843. This property cost $25,205, and this was probably its value when acquired by the South Carolina Railroad Company. Its present assessed value is $99,600. This increased value of $74,395 is entirely owing to the workshops, depots, and other improvements, which have been put upon the land, by the South Carolina Railroad Company, since 1843, the value of all other lands 8
in the city having in the meantime greatly depreciated. According to the testimony of Mr. Magrrath, the President of the Road, all the depots and other buildings existing prior to that time, have been entirely destroyed or removed, and replaced by others of a far more costly and substantial character.

2d. Various lots, purchased by the Louisville, Cincinnati and Charleston Railroad Company, between December, 1837, and February, 1843. The lots are now valued in the aggregate at $2,300.

3d. Various lots, purchased by the South Carolina Railroad 9
Company, since 1844, and now valued at $177,400.

Prior to 1849 all of this land was without the corporate limits of the City of Charleston. By the Act passed on the 19th day of December, 1849, the City limits were extended, and then they took in, for the first time, the property of the South Carolina Railroad Company.

The second parcel of land, belonging to the Company, lies in the eastern portion of the city, on Cooper River. It consists of various lots, purchased by the South Carolina Railroad Company, between the years 1853 and 1870. Its present value 10
is $94,900. The history of this purchase is as follows: The

South Carolina Canal and Railroad Company was not authorized to cross the limits of the city. It had only power to come to the boundary line of the city, and the City Council were authorized to permit the extension of its Road through the public streets and lands of the city. (A. A. 1832.) In 1840, the Legislature authorized the South Carolina Railroad Company to extend their Road to some one or more of the wharves in Charleston, (A. A. 1840,) and in 1845, adopted a joint reso-
11 lution, declaring that they regarded it as highly desirable, that the Company should forthwith lay down a track to connect the depot with the wharves of Charleston in such manner as might afford free access and competition to all.

The evidence shows, that the property in the eastern part of the city was purchased to carry out that purpose, and that it is the intention of the Company to locate its depots at that point, as soon as the means to make the connection can be raised. Though not in actual use, there is no doubt that this property has been acquired by the South Carolina Railroad Company,
12 for the joint accommodation of the entire system of Roads under its control. This is also true of all the other property (with an inconsiderable exception,) now owned by the South Carolina Railroad Company, whether purchased from the South Carolina Canal and Railroad Company or other parties. The whole property which can, with any propriety, be said to have been purchased by the South Carolina Railroad Company, directly under its own charter, for purposes connected *exclusively* with its original Road, is the property purchased by it under the name of the Louisville, Cincinnati and Charleston Railroad
13 Company, before 1843, and when the union of that Company and the South Carolina Canal and Railroad Company had not been thought of. And this property, even if it is properly to be regarded as having been purchased exclusively for the South Carolina Railroad, ceased to be so used after 1843, and from that time to the present, has been used for the joint accommodation of the entire system of Roads.

The Master comes to the following conclusion:

"I am, therefore, of opinion, that all the property set forth in the Schedule as having been owned by the South Carolina
14 Canal and Railroad Company, with the appendages and appur-

tenances thereof, as they existed at the time of the transfer to the South Carolina Railroad Company, are liable to taxation. I find that the value of this property at that time was $25,205, its cost price, and that the increased value given to it by the depots, work-shops, railroad tracks, and other improvements since put upon it by the South Carolina Railroad Company, is $74,395. These improvements come under the category of property acquired by the South Carolina Railroad Company under its own charter and must be taxed accordingly.

3d. That of the Company's property in Charleston, acquired 15
by the South Carolina Railroad under its own charter, for the joint accommodation of the entire system of roads under its control, so much as is properly apportionable and applicable to that part of the line which extends from Branchville to Columbia and Camden, is exempt from taxation. This applies to all property purchased by the South Carolina Railroad Company since 1843. Its value, including the improvements put upon the land purchased from the South Carolina Canal and Railroad Company, is $346,695.

What proportion of this property should be exempt from taxa- 16
tion? The length of the road is the only mode which has been suggested by either side of estimating this.

The length of the road from Charleston to Hamburg is 136 miles; from Branchville to Columbia 68 miles, and from Kingville to Camden 38 miles. If, therefore, I am right in supposing that it was the intention of the Supreme Court to exclude the South Carolina Railroad Company from exemption from taxation, in reference to that portion of the road acquired from the South Carolina Canal and Railroad Company, which extends from Charleston to Branchville, and which is now used jointly by the 17
two roads, *106-136 of this property is exempt from taxation.

The personal property owned by the Company, within the city limits, is appraised at $45,750. It was all acquired by the South Carolina Railroad Company, under its own charter, for the joint accommodation of all the roads under its control, and the same rule must be applied to it, as has been adopted in reference to the real estate similarly acquired."

(*Error, should read "106-242.")

18 The Master submits with this report, a report of the testimony upon which it is founded. To this report the City Council filed the following exceptions:

"I. For that said Master, by his said Report, certified that within the limits of the City of Charleston, the South Carolina Railroad Company has property, real and personal, to wit:

1. Value of improvements on the various lots of land purchased by the South Carolina Canal and Railroad Company, prior to December, 1837, consisting of Work Shops, Depots, &c., (p. 2) - -		$ 74,395
19 2. Various lots of land purchased since 1844, between King and Meeting streets, valued at - - - - - -	$177,400	
And lands on Cooper River, valued at	94,900	272,300
3. Six miles and 791 feet of main track and side track, valued at - - -	$25,000	
And Stationary Engines, and other Machinery, valued at - - - -	20,750	45,750
Total - - - - - - -		$372,445

And that all of said property was acquired by said Company under its own Charter, for the joint accommodation of the entire
20 system of Roads under its control, and the same is to be apportioned as taxable and non-taxable as 136, length of Road from Charleston to Hamburg, is to 106, length of Roads from Branchville to Columbia, and Kingville to Camden; that is, $221,174.05 of said property is taxable, and $171,070.95 is not taxable; whereas said Master should have certified that all of said property was acquired for the accommodation of the line of, and is now held by virtue of the Charter of, the South Carolina Canal and Railroad Company, (under which and the amendment thereof of December 20, 1832, Stat. at Large, vol. 8, p. 380, the
21 Railroad from Charleston to Hamburg was constructed,) and like all other property held under the provisions of that Charter, and its amendments, said property is subject to taxation by the City of Charleston; and especially said Master

should have certified that the value of *improvements* put upon the various lots of land, purchased by the South Carolina Canal and Railroad Company, prior to December, 1837, are subject to taxation. Said lands are certified as subject to taxation, and hence all improvements thereon, in the shape of "Depots, Workshops, Railroad Tracks, &c.," before or since 1843, must be held taxable. 22

That said improvements are superstructures and fixtures upon the said lands, and not separable therefrom.

And said Master should have certified that said various lots of land, purchased by the South Carolina Railroad Company since 1844, lying between Meeting and King streets, valued at $177,400, are subject to taxation, and no part or proportion thereof is exempt from taxation.

That said property, though purchased since 1844, is held under the franchise granted by the State in 1827, 1828, and 1832, to the South Carolina Canal and Railroad Company. 23 (Stat. at Large, vol. 8, pp. 354–5 and 380.)

That said lands are located on the line of said Company's Road, extending through nine squares of the City of Charleston, and are held for the accommodation of, and are an appendage and appurtenance of said line, and are not held for the accommodation, and are not an appendage and appurtenance of any other line of road.

And said Master should have certified that said six miles and 791 feet of main track and side track, valued at $25,000, are a part of, and appurtenant to, the main line of Railroad from 24 Charleston to Hamburg, and the same is built upon the lands purchased by the Sonth Carolina Canal and Railroad Company, and held, so far as relates to taxation, under the provisions of the Charter of the South Carolina Canal and Railroad Company, and the same is subject to taxation.

And the said Master should have certified that said lands on Cooper River, valued at $94,900, are subject to taxation, because, though it appears by exhibit "B" that said lands were purchased in 1853, 1856, and 1870, for the ostensible purpose of establishing a Depot on Cooper River, the same have never 25 been used by the Company, and cannot be used till the track is extended there, three-fourths of a mile nearest route, and no

line has yet been located or determined upon, and no time is or can be named by the Company within which the connection with that point shall be made. That said property is not now used by, and is not now necessary for the use of the Company.

Further, said lands, when, if ever, required and used for the business of said Company, or if regarded as necessary now to carry out its designs, will be used as an appendage and appur-
26 tenance to the line of Road extending from Charleston to Hamburg.

And said Master should have certified that said Stationary Engines and Machinery, valued at $20,750, are subject to taxation, because he should have certified the same are upon and used upon lands purchased by the South Carolina Canal and Railroad Company (especially the blacksmith shops), and lands adjoining thereto, and the same are an appendage of the line of road from Charleston to Hamburg, which has no claim to exemption from taxation.

27 II. For that said Master, in his said report, certified that said South Carolina Railroad Company possesses within the limits of the City of Charleston certain parcels of real estate, purchased by the Louisville, Cincinnati and Charleston Railroad Company, from December, 1837 to 1844, valued at $2,300, and same are exempt from taxation; whereas said Master should have certified that said property is subject to taxation, and certified further, that it was not proven before him that said Company had ever constructed, under its own charter, any railroad within the limits of the City of Charleston, and said property
28 is used wholly now, and has been, since the date of the purchase thereof, in connection with the line of the South Carolina Canal and Railroad Company, and the line of no other Railroad Company, and by said Company used for side tracks and depots.

And, further, said property was actually purchased by the South Carolina Canal and Railroad Company, as proven by the plaintiffs in this cause, on a former occasion, by the same witness, who testifies now, and said proof is of record in this cause.

III. For that said Master, in his said Report, certified that of the real estate acquired by the South Carolina Railroad Com-
29 pany within the limits of the City of Charleston, $346,695 thereof was acquired by the said Company for the joint accom-

modation of the entire system of Roads under its control, whereas said Master should have certified that it is not and has not been fairly shown that any of the Company's property in Charleston was acquired by the said Company for the accommodation of the business belonging to its original Roads, or for the joint accommodation of the entire system of Roads under its control, because it appears from the Report and testimony submitted by said Master, that no evidence has been offered to show that the lines of Road from Branchville to Columbia, and 30
from Kingville to Camden, built by the South Carolina Railroad Company, under its own Charter, have ever been extended to Charleston, or that it has heretofore, or is now, contemplated extending them to Charleston, or that there is any real estate in the City of Charleston belonging to, used by, or appurtenant to, said Roads.

That the traffic over said Roads to Charleston leaves said Roads, one of them at Kingville, and the other at Branchville, the last and nearest point to Charleston being sixty-two miles distant. That the real estate in Charleston, thus sixty-two 31
miles distant from the nearest point of the lines of Road constructed by the South Carolina Railroad Company, under its own Charter, cannot in any proper sense be regarded as an appendage or appurtenance thereof, or as acquired for the accommodation thereof. As matter of fact this has not been proven."

After these exceptions were filed the following supplemental report was made by the Master:

"My original report in this case was filed on the 20th March, 1874. To this report both the Plaintiffs and the City Council 32
have excepted.

"Upon the question of fact raised by the second exception, filed by the City Council, I allowed additional evidence to be introduced, which is herewith filed as a part of this report.

"The other exceptions raise issues of law.

"After careful consideration, I see no reason to change the opinions expressed in my original report, and the exceptions are, therefore, overruled,

"Respectfully submitted,

"S. LORD, JR., *Special Master.* 33

"April 16th, 1874.

line has yet been located or determined upon, and no time is or can be named by the Company within which the connection with that point shall be made. That said property is not now used by, and is not now necessary for the use of the Company.

Further, said lands, when, if ever, required and used for the business of said Company, or if regarded as necessary now to carry out its designs, will be used as an appendage and appur-
26 tenance to the line of Road extending from Charleston to Hamburg.

And said Master should have certified that said Stationary Engines and Machinery, valued at $20,750, are subject to taxation, because he should have certified the same are upon and used upon lands purchased by the South Carolina Canal and Railroad Company (especially the blacksmith shops), and lands adjoining thereto, and the same are an appendage of the line of road from Charleston to Hamburg, which has no claim to exemption from taxation.

27 II. For that said Master, in his said report, certified that said South Carolina Railroad Company possesses within the limits of the City of Charleston certain parcels of real estate, purchased by the Louisville, Cincinnati and Charleston Railroad Company, from December, 1837 to 1844, valued at $2,300, and same are exempt from taxation; whereas said Master should have certified that said property is subject to taxation, and certified further, that it was not proven before him that said Company had ever constructed, under its own charter, any railroad within the limits of the City of Charleston, and said property
28 is used wholly now, and has been, since the date of the purchase thereof, in connection with the line of the South Carolina Canal and Railroad Company, and the line of no other Railroad Company, and by said Company used for side tracks and depots.

And, further, said property was actually purchased by the South Carolina Canal and Railroad Company, as proven by the plaintiffs in this cause, on a former occasion, by the same witness, who testifies now, and said proof is of record in this cause.

III. For that said Master, in his said Report, certified that of the real estate acquired by the South Carolina Railroad Com-
29 pany within the limits of the City of Charleston, $346,695 thereof was acquired by the said Company for the joint accom-

modation of the entire system of Roads under its control, whereas said Master should have certified that it is not and has not been fairly shown that any of the Company's property in Charleston was acquired by the said Company for the accommodation of the business belonging to its original Roads, or for the joint accommodation of the entire system of Roads under its control, because it appears from the Report and testimony submitted by said Master, that no evidence has been offered to show that the lines of Road from Branchville to Columbia, and 30
from Kingville to Camden, built by the South Carolina Railroad Company, under its own Charter, have ever been extended to Charleston, or that it has heretofore, or is now, contemplated extending them to Charleston, or that there is any real estate in the City of Charleston belonging to, used by, or appurtenant to, said Roads.

That the traffic over said Roads to Charleston leaves said Roads, one of them at Kingville, and the other at Branchville, the last and nearest point to Charleston being sixty-two miles distant. That the real estate in Charleston, thus sixty-two 31
miles distant from the nearest point of the lines of Road constructed by the South Carolina Railroad Company, under its own Charter, cannot in any proper sense be regarded as an appendage or appurtenance thereof, or as acquired for the accommodation thereof. As matter of fact this has not been proven."

After these exceptions were filed the following supplemental report was made by the Master:

"My original report in this case was filed on the 20th March, 1874. To this report both the Plaintiffs and the City Council 32
have excepted.

"Upon the question of fact raised by the second exception, filed by the City Council, I allowed additional evidence to be introduced, which is herewith filed as a part of this report.

"The other exceptions raise issues of law.

"After careful consideration, I see no reason to change the opinions expressed in my original report, and the exceptions are, therefore, overruled,

"Respectfully submitted,

"S. LORD, JR., *Special Master.* 33

"April 16th, 1874.

"TESTIMONY OF W. J. MAGRATH, FILED WITH SUPPLEMENTAL REPORT.

"W. J. Magrath, recalled:

"In his judgment all the tracks below Mary street must have been constructed by the South Carolina Railroad Company. All the rails now on the track between Line street and Mary street, were laid by the South Carolina Railroad Company. The crossties now on the track were also put there by
34 the South Carolina Railroad Company, as was everything connected with the track.

"None of the property owned by the Company is used exclusively for the purposes of the Road from Charleston to Hamburg, all of it is devoted to the transaction of the business of the Company in all directions.

Cross-Examined.

"It is probable that the records of the Company would show the precise date when the tracks between Mary and Hudson streets were laid. Witness has not consulted them for that
35 purpose. The tracks and ties *now* between Line and Mary street have been substituted for those previously there. The same remark applies to the whole line of Road between Charleston and Augusta.

"Sworn to before me, this 14th April, 1874.

"SAMUEL LORD, JR., *Master.*"

The Circuit Court for the District of South Carolina, upon the foregoing reports, made the following decree:

"This case came up on the report of the Special Master, and the exceptions thereto on the part of the Plaintiff and the
36 Defendants, and the report thereon.

The Master reports that the various lots of land purchased by the South Carolina Canal and Railroad Company, prior to December, 1837, and vested in the South Carolina Railroad Company by the Act of 1843, are taxable in toto only in the condition in which they passed into the hands of the latter Company, and that the improvements which have been put upon the land by the South Carolina Railroad Company since 1843, come

under the category of property acquired by the South Carolina Railroad Company under its own charter, and so taxable only pro tanto. To this ruling the City Council excepts and claims 37
that all the improvements on the land in the shape of depots, work-shops, railroad tracks, &c., before or since 1843, must be held taxable, inasmuch as said improvements are superstructures and fixtures upon the said lands, and not separable therefrom. I am of opinion that so much of this exception as refers to the depots, work.shops, and other buildings, erected by the South Carolina Railroad Company, on the lands acquired from the South Carolina Canal and Railroad Company is well taken, and so much of the Master's report as holds that these improvements, valued in the report at $74,395, are taxable only pro tanto, 38
is overruled. I am satisfied by the evidence that the tracks and side tracks within the city limits have all been replaced by the South Carolina Railroad Company since 1843, and are used for the joint accommodation of the united system of roads under its control, and are, therefore, taxable only pro tanto, according to the standard reported by the Master. The same rule is also to be applied to the stationary engines, tools, machinery, &c., reported by the Master as of the value of $20,750.

All other exceptions by Plaintiff and Defendants are overruled, and the Report of the Master, except as herein above 39
modified, is confirmed and made the decree of the Court."

The City Council appeal from this decree on the ground that the exceptions to the Master's Report filed by the City Council should have been sustained.

ARGUMENT.

The question made in this record is, what property, if any, of the South Carolina Railroad Company, within the limits of the City of Charleston, is exempt from taxation? 40

I. As to lands purchased by the South Carolina Canal and Railroad Company, with improvements since erected thereon.

For the purposes of this argument it is regarded as settled by the decision in Tomlinson *vs.* Branch, that the line of

road from Charleston to Hamburg, a distance of one hundred and thirty-six miles, was constructed under the Charter granted by the State of South Carolina to the South Carolina Canal and Railroad Company, in 1827 and 1828. (Stat. at Large, vol. 8, p. 354-5,) and was completed in 1833, (Tomlinson *vs.* Branch,
41 Wal. 462,) and its thirty-six years of exemption from taxation expired in 1869.

As to this line of road, the Court, in Tomlinson *vs* Branch, say (15 Wal., 463): "As to the road, property, and works appertaining to the main line from Charleston to Hamburg, the South Carolina Railroad Company has no claim to exemption from taxation."

Now it remains to enquire if there is any property of the South Carolina Railroad Company, in the City of Charleston, not necessarily comprehended in this determination.

42 By an examination of the map of the City of Charleston, marked Exhibit A, it will be seen that the line of the South Carolina Railroad terminates at Hudson street, entering the city from the northern limit. Louis J. Barbot, City Engineer, testifies (folio 47) (and his testimony is not disputed) that the present track of the South Carolina Railroad Company to Hudson street is located on lands purchased by the South Carolina Canal and Railroad Company." Now an examination of the dates of purchase of these lands (see Record, Exhibit B) shows that a right of way, grounds for depots and yards, to Hudson street, *were*
43 *purchased* a year *before* the charter of the "Cincinnati and Charleston Railroad Company," *alias* the "Louisville, Cincinnati and Charleston Railroad Company," *alias* the "South Carolina Railroad Company," was granted, and ten years before the union of the South Carolina Canal and Railroad Company with that Company. That charter was granted in 1835, and is the one under which exemption is claimed, and was consolidated with the South Carolina Canal and Railroad Company in 1843. The last lots, upon which the terminal depot on Hudson street now stands, were purchased in 1834. (See Record, p. 40)

44 It is thus placed beyond question, as a matter of fact, that the line of road from Charleston to Hamburg, (that portion of it which now lies within the limits of the City of Charleston,) was located, and the right of way purchased, by the South Carolina

Canal and Railroad Company. It must, therefore, we submit, be held under the conditions of the charter of that Company.

When all the track, or iron rails, were actually laid to Hudson street, does not appear from the testimony, although the President of the Company was twice cross-examined by the Appellant upon that point. On each occasion he thought the records of the Company would show. (See Record, p. 44) But on the last occasion he said he "had not consulted them for that purpose." (See Record, p. 47) Notwithstanding this, he gave it as his judgment, "that all the tracks below Mary street must have been constructed by the South Carolina Railroad Company." (See Record folio, 48) It is submitted that his "judgment" as to a matter of fact, when that fact was of record in his office, will hardly be treated as evidence. But, however this may be, whether the track from Mary street to Hudson street was completed before the consolidation of 1843, or after, it is not disputed that, when completed, it was, and is, upon the lands purchased by the South Carolina Canal and Railroad Company for that purpose. (Record, F. —.) 1817.

45

46

Now this property was purchased and is held subject to this agreement, "that during the first period of thirty-six years," (which expired in 1869,) "the stock of the Company, and the real estate that may be purchased by them and connected with, and be subservient to, the works herein authorized, shall be exempt from taxation." (Sec. 14. Charter South Carolina Canal and Railroad Company.)

When the case was here before it was made distinctly to appear, that the Louisville, Cincinnati, and Charleston Railroad Company, afterwards the South Carolina Railroad Company, "never built any portion of the Railroad authorized by its charter, except from Branchville to Columbia, and a branch to Camden." (15 Wal., p. 468.) This was the proof, and the Court has recorded it as a fact found.

47

Our conclusion upon this point is, that the road-bed of the South Carolina Railroad Company, within the City of Charleston, having been wholly purchased by the South Carolina Canal and Railroad Company, must be held to be subject to taxation. The Court below has so held, and such, in reason, must unquestionably be the law.

48

But an attempt was made in the Court below to distinguish between the lands as purchased by the South Carolina Canal and Railroad Company, and the lands with the improvements thereon, by way of workshops, depots, and other improvements, which have been put upon them by the South Carolina Railroad Company since 1843." (Folio 9.)

49 These improvements are said to be worth $74,375. This distinction for this purpose cannot be sustained.

As already shown, the "real estate" purchased by the South Carolina Canal and Railroad Company, for the purposes of a Railroad, was to be exempt till 1869, and after that it was to be subject to taxation.

This real estate was purchased for the express purpose of erecting various structures thereon, which would subserve the various uses of a railroad. Upon this theory alone was the Company allowed to purchase and hold it. The Charter con-

50 templates this, and even the exemption clause, before cited, keeps it in view. It is "the stock and real estate that may be subservient to the *works* authorized," that are exempted.

The term "real estate" includes land and whatever is erected or growing upon the same, with whatever is beneath or above the surface. (2d Black. 17 to 19.) Certainly the "depots, work shops, railroad tracks and other improvements," are thus fairly comprehended.* They are fitted and actually applied to the real estate and are of a permanent nature, and would pass from a vendor to the vendee with it. Since the Charter of the

51 South Carolina Canal and Railroad Company covers these lands it must cover also the erections upon them, especially erections of the class for which they were expressly purchased. The fact that they are erections built since the consolidation of the South Carolina Canal and Railroad Company with the Louisville and Cincinnati and Charleston Railroad Company, in 1843, can make no difference as to taxation. They are simply additions, fixtures, or improvements to the *land*, which was by contract temporarily withdrawn from taxation. To say they are to be exempt from taxation in any degree is to assume that

52 the Charters of the two original corporations in some mysterious way meet, coalesce and overlap each other in the same piece of property; in other words, that the Charter of the Canal Com-

* New Haven v. Fair Haven & Westville R. R. Co. 38 Conn. 422. Also, 3 Amer. Ry. Cases 281.

pany covers the land and the Charter of the Louisville, Cincinnati and Charleston company, covers the buildings upon the land.

Those who maintain this proposition will probably be asked to show some authority for such a doctrine, either in legislative enactment or authoritative decision. That there can be no such amalgamation of charters, meeting in and dividing the same piece of realty between them, is apparent from the language of the Court in Tomlinson *vs.* Branch, (15 Wal. 465) where it 53
is said, "Had it been intended that the road and property of the old Company should be owned and controlled by the new Company, under its own charter, in the same manner as its other property, it would have been easy to have so declared. Not having so declared we cannot presume that such was the intent. The keeping alive of the rights and privileges of the old Company, and transferring them to the new Company, in connection with the property, indicates the legislative intent that such property was to be holden in the same manner, and subject to the rights as before." In the case of the Philadelphia 54
and Wilmington Railroad Company *vs.* Maryland (10 H. 394) the Court says of the union of the two roads, "that whatever privileges and advantages either of them possessed, should in like manner be held and possessed by the new Company, *to the extent of the road they had respectively occupied before the union;* that it should stand in their place, and possess the power, rights, and privileges they had severally enjoyed *in the portions of the road* which had previously belonged to them." This doctrine is reaffirmed in Tomlinson *vs.* Branch, 466.

Thus there can be no interweaving of charters, but each must be confined to its own line or portion of road that belonged to it previous to the Union. 55

II. As to taxation of the railroad track.

The Court below says, "I am satisfied by the evidence that the tracks and side tracks within the City limits have all been replaced by the South Carolina Railroad Company since 1843, and are used for the joint accommodation of the united system of roads under its control, and are, therefore, taxable only pro tanto according to the standard reported by the Master."

I confess my inability to reconcile this portion of the ruling of the Court below with the ruling that precedes it, or with the

decision of Tomlinson *vs.* Branch, of Philadelphia and Wilmington Railroad Company *vs* Maryland.

The Court in the two preceding sentences says: "To this ruling the City Council excepts, and claims that all the improvements on the lands, in the shape of depots, work-shops, railroad tracks, &c., before or since 1843, must be held taxable, inasmuch as said improvements are superstructures and fixtures upon the said lands and not separable therefrom. I am of opinion that *so much* of this exception as refers to the *depots, workshops, and other buildings*, erected by the South Carolina Railroad Company, on the lands acquired from the South Carolina Canal and Railroad Company is well taken, and so much of the Master's report as holds that these improvements, valued in the report at $74,395, are taxable only pro tanto is overruled."

Now, how can the depots, workshops, etc., erected by the South Carolina Railroad Company since 1843, on lands acquired from the South Carolina Canal and Railroad Company be taxable, as the Court correctly holds, and yet "the tracks and side tracks within the city limits, replaced," (renewed or repaired) "by the South Carolina Railroad Company since 1843, be taxable only *pro tanto?*"

In one breath, the Court says, the "depots and workshops" put upon the lands of the South Carolina Canal and Railroad Company, before or since 1849, are taxable, but the "tracks and side tracks," put upon the lands of said early Company, "substituted for those previously there," (folio 25) are taxable only *pro tanto.*

Upon what principle is this distinction made? Are superstructures in the shape of depots and workshops to be treated differently from superstructures, in the shape of embankments, cross-ties, and iron rails, in reference to taxation, the earth beneath, the foundation of both, being subject to taxation? Both partake of the nature of realty, have become a part of it, and are comprehended under the term land. Without following this line of argument further, it is sufficient to say of it, that by such a course of reasoning the whole track from Charleston to Hamburg, having been "re-placed" since the union of the two roads, (see Magrath's testimony, folio 36), must hence be exempt from taxation or "taxable only pro tanto."

Thus the novel doctrine will be established that a line of rail- 60
road subject to taxation, may become gradually exempt from taxation, or taxable only pro tanto, by uniting it with a line of road exempt from taxation, and then renewing its rails and ties as they rot or wear out.

It may not be improper to inquire of the author of this new doctrine whether it works both ways; whether a non-taxable road by the same manipulation would in the same manner become taxable, or taxable pro tanto? The argument reduces itself to an absurdity, and directly contradicts the principles of the cases before cited, and in fact the very language of the former decision in this cause, "that all *parts of the road* and 61
property formerly belonging to the South Carolina Canal and Railroad Company, and all appendages and appurtenances thereof, are liable to taxation," (15 Wal. 471.)

III. As to the lands acquired since the union of the two roads in 1843, lying between Meeting and King streets, valued at $177,400. and on Cooper River valued at $94,900. By reference to the Map of Charleston, and the explanatory note thereto, it will be seen that these lands, except the latter, are located on and along the line of the road established by the South Carolina *Canal* and Railroad Company, and by reference to the exhibits B and C, and said Map it will be seen from the uses to which they are put, that they are an appendage and 62
appurtenance of said line. Exhibit C shows that the lands on *John street, north*, were purchased in 1834, 1849, and 1853, and are used together for a freight depot.[1] The lands on *Ann street, south*, were purchased in 1834, 1848, and 1849, and are used for a freight depot.[1] The lands on Ann street, north, were purchased in 1849 and 1834, and are used for a freight depot,[2] and the lands purchased in 1833 and 1848, are used for a yard. The lands on Mary street, *south*, and those adjoining on Meeting street, were purchased in 1847 and 1848, and are used for a freight depot, and the lands purchased in 1838, 1834, 1849, 63
1855 and 1847, are used for a yard.[3] Lands on *Mary street, north*, and those adjoining on Meeting street, were purchased in 1834, 1835, 1856 and 1847, and are used for a yard.[4] And thus on, through the whole list, there appears to be a joint use and occupation of the lands purchased at widely different times. It will be seen that lands purchased *since* 1843, the date of

1. Map of Charleston Note 2.
2. " " " " 3.
3. " " " " 3 + 4.
4. " " " " 5.

the union of the two roads, are connected with and used with the lands purchased *before* the union, and for the same purposes, and that they are as much an "appendage and ap-
64 purtenance" of the line of road built by the South Carolina Canal and Railroad Company, as any lands purchased for and used by that Company before the union. The two classes of lands are united, form the foundation for the same depot buildings, and form parts of the same yards. Old lines are broken down, and the identity of much of the old and new lands are in a measure lost, to be found only by a surveyor with chain and instruments, guided by the old deeds and plats.

These lands, with the improvements upon them have thus entered into and became part and parcel of the line of Rail-
65 road, built and maintained under the charter of the South Carolina Canal and Railroad Company, and they should be held subject to its provisions.

But it is said that these lands were "acquired by the South Carolina Railroad Company, for the joint accommodation of the entire system of roads under its control."

How is this shown and what are the facts? The Louisville, Cincinnati and Charleston Railroad Company, alias the South Carolina Railroad Company, since the union, has built, under its own charter, the branch from Branchville to Columbia, sixty-
66 eight miles, with a branch from Kingville to Camden, thirty-eight miles, in all one hundred and six miles of road, the nearest approach to Charleston being Branchville, sixty-two miles distant. Now is there any proper sense in which it can be said that this property in Charleston is for the joint accommodation of this entire system of Roads? Is it not rather to be regarded as an "appendage and appurtenance" of the line from Charleston to Hamburg?

It can only be said that the business of these branch Roads to Columbia and Camden has, with the growing business of the main line from Charleston to Hamburg, coming to Charleston,
67 created the necessity for larger accommodations in the shape of freight depots, yards, &c., in the City of Charleston. Now, there is no fact in the case which furnishes ground for regarding the traffic, which comes from the Columbia and Camden Branches to the Hamburg and Charleston line, as separate and

distinct from the traffic otherwise coming to said line. The moment freight reaches the Charleston and Hamburg line from any source, (whether from these branches or connecting roads,) it becomes intermingled with, and forms a part of, the proper business of said line, and, whether deliverable at the way-stations, or at either terminus, it must find temporary accommo- 68
dation in the depots of said line. It is, therefore, quite as proper to hold that all the depots built at the way-stations on the Charleston and Hamburg line, since 1843, are "for the joint accommodation of the entire system of roads," as it is to so hold of any of the terminal depots in Charleston.

It is doubtless true that any one part of a line of railroad or system of roads may be required in the course of time and events to accommodate every other part of the line or system of roads. That is, every rod of track and side track, every depot and switch, may be required from time to time to accom- 69
modate the business coming from any and every other portion of the road. But does this warrant the conclusion, that the tracks and depots on one line, are for the joint accommodation of that line and the other connecting lines, and consequently, that said depots and tracks so used, are to be taxed or not taxed, as, or in proportion to, the amount of accommodation thus afforded to the respective lines? We assert confidently that it does not.

The relations between distinct lines of railroad established for business purposes, can hardly affect the contract subsisting between said several lines and the State. A Railroad corporation 70
owes its origin and continuance to its charter. A union with other lines and a change of name, in no way disturbs the established relations with the State, "but all its rights and duties, its privileges and obligations, as related to the public or to third persons, remain." (Tomlinson *vs.* Branch, 15 Wal., 465.)

It is clearly established by reason and authority, "that the charters of the respective lines cover the property and works of those lines, and define their relations to the public so far as relates to taxation." (Philadelphia, Wilmington and Baltimore 71
Railroad Company *vs.* Maryland, 10 H., 394.)

This rule is plain and easy of application; any other rule, such as contended for on the other side, is not only illogical,

but impracticable, leading in practice to confusion and controversy.

In conclusion, it is confidently submitted that all the property, real and personal, of the South Carolina Railroad Company, within the limits of the City of Charleston, upon the case stated, whether purchased before or since the amalgamation of 1843,
72 should be held subject to taxation.

D. T. CORBIN,
Solicitor for City Council.